राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शनिवार, 22 अक्तूबर, 2022 / 30 आश्विन, 1944

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Shimla the 22nd August, 2022

No: Shram (A) 3-8/2021 (Awards) L.C Shimla.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Shimla on the website of the Printing & Stationery Department, Himachal Pradesh *i.e.* "e-Gazette" :—

Sl. No.	Case No	Petitioner	Respondent	Date of Award/Order
1.	Ref. 124/2016	Sh. Sanjay Kumar	Maharishi Markendeshwar Clg. & Hospital.	01-07-2022
2.	Ref. 125/2016	Sh. Nitish Kumar	Maharishi Markendeshwar Clg. & Hospital	01-07-2022
3.	Ref. 126/2016	Sh. Sanjay Kumar	Maharishi Markendeshwar Clg. & Hospital.	01-07-2022
4.	App. 46/2019	Sh. Bhim Singh	The XEN, HPPWD Sangarh.	01-07-2022
5.	Ref. 144/2018	Sh.Geeta Ram	Chief Conservator of Forest & Ors.	01-07-2022
6.	App. 20/2018	Sh. Bal Ram	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
7.	App. 21/2018	Sh. Gopal	M.D. Kurukshetra Automobiles (P) Ltd.	01-07.2022
8.	App. 22/2018	Sh. Ashok Kumar	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
9.	App. 23/2018	Sh. Manoj Kumar	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
10.	App. 24/2018	Sh. Ajay Kumar	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
11.	App. 25/2018	Sh. Om Parkash	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
12.	App. 26/2018	Sh. Mukesh Kumar	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
13.	App. 27/2018	Sh. Pawan Kumar	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
14.	App. 28/2018	Sh. Span Kumar	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
15.	App. 29/2018	Sh. Sohan Lal	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
16.	App. 30/2018	Sh. Gurpreet Singh	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
17.	App. 31/2018	Sh. Sanju Kumar	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
18.	App. 32/2018	Sh. Kasif	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
19.	App. 33/2018	Sh. Jai Pal	M.D. Kurukshetra Automobiles (P) Ltd.	01-07-2022
20.	Ref. 119/2017	Sh. Deep Ram	Manager, HPPCL Renukaji Dam Project.	01-07-2022
21.	Ref. 120/2017	Sh. Ganga Dutt	Manager, HPPCL Renukaji Dam Project.	01-07-2022
22.	Ref. 121/2017	Sh. Man Singh	Manager, HPPCL Renukaji Dam Project.	01-07-2022
23.	Ref. 122/2017	Sh. Rajinder Singh	Manager, HPPCL Renukaji Dam Project.	01-07-2022

24.	Ref. 123/2017	Sh. Rama Nand	Manager, HPPCL Renukaji Dam Project.	01-07-2022
25.	Ref. 124/2017	Sh. Rameshwar	Manager, HPPCL Renukaji Dam Project.	01-07-2022
26.	Ref. 149/2022	Smt. Sumitra Devi	Welcure Remedies Ltd.	01-07-2022
27.	Ref. 164/2021	Sh. Sudhir Kumar	Super Nova Auto Insd.	01-07-2022
28.	Ref. 11/2021	Sh. Karan Kumar	Manjushree Technoplast Ltd.	01-07-2022
29.	Ref. 146/2018	Smt. Kanta Devi	Principal Convent Jesus & Merry Nav Bahar.	01-07-2022
30.	Ref. 16/2019	Sh. Janjotra Ghandi	G.M. cum HOP HPPCL & Ors	01-07-2022
31.	Ref. 26/2019	Sh. Bayas Dev	G.M. cum HOP HPPCL & Ors	01-07-2022
32.	Ref. 45/2019	Rabinder Singh	G.M. cum HOP HPPCL & Ors	01-07-2022
33.	Ref. 158/2017	Sh. Shakti Kumar	M/s Patel Engineering Ltd.	01-07-2022
34.	Ref. 14/2018	Sh. Kewal Ram	M/s Patel Engineering Ltd.	01-07-2022
35.	Ref. 55/2018	Narbu Gialchhan	M/s Patel Engineering Ltd.	01-07-2022

By order,

AKSHAY SOOD, IAS,
Secretary (Lab. & Emp.).

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-*CUM*-LABOUR COURT, SHIMLA

Reference Number : 124 of 2016
Instituted on : 12.12.2016.
Decided on : 01.07.2022

Sanjay (Sanjiv) Kumar s/o Shri Kishan Singh, r/o Village Jabhog, P.O. Sultanpur, Tehsil & District Solan, H.P. ..*Petitioner.*

VERSUS

The Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, PO Sultanpur, Tehsil & District Solan, H.P. . .*Respondent*.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : None.
For the Respondent : Shri Ajay Kumar Dhiman, Adv.

AWARD/ORDER.

The following reference petition has been, received from the Appropriate Government *vide* notification dated 07.09.2016, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for legal adjudication:

"**Whether the termination of the services of Shri Sanjay (Sanjiv) Kumar s/o Shri Kishan Singh r/o Village Jabhog, PO Sultanpur, Tehsil & District Solan, HP through**

Shri J.C. Bhardwaj, President HP AITUC, HQ, Saproon, District Solan, HP, who was working as lift operator, by the Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, PO Sultanpur, Tehsil & District Solan, HP w.e.f. **17.11.2014 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed the statement of claim.

3. Briefly stated, the case as pleaded from the side of the petitioner in his statement of claim is that the petitioner was engaged on daily wages basis by the respondent in the month of September, 2013 and he was posted in the lift section of the respondent college as lift operator/operator. The petitioner had worked for more than 14 months with the respondent but on 17.11.2014, the respondent without any bonafide reason verbally terminated the services of the petitioner. Thereafter, the petitioner visited the respondent college many times in order to perform his duties but he was illegally restrained, abused and manhandled by the security guards on the instructions of the respondent management. It is further asserted that the services of the petitioner have been terminated without any notice and retrenchment compensation. The junior workmen in the same institution were retained by the respondent in violation of the provisions of sections 25-G and 25-H of the Act. In the footnote of the claim petition, the petitioner prayed for the following relief's:

"It is therefore most respectfully prayed that this Hon'ble Court be pleased to answer the reference in favour of workmen holding this retrenchment/termination to be wholly improper and unjustified and to direct the respondent to re-engage the services of the petitioner as daily wager with the respondent college and hospital at the same place and in the same capacity as he had been working prior to disengagement w.e.f. **17.11.2014 and also direct the respondent to pay the petitioner all the consequential pecuniary benefits "**

4. The lis was resisted and contested by the respondent by filing written reply wherein preliminary objections that the petitioner was engaged by a private registered agency providing outsourcing workmen for various parties, the respondent being educational institution did not cover under the industrial law, suppression of material facts, locus standi and estoppel have been raised.

5. On merits, it is asserted that the petitioner was engaged through outsource agency and he was not the workman of respondent institute. Therefore, it was in between the agency and workman to allow wok of terminate his services and not with the respondent. The respondent only pay the amount in a consolidated account payee cheque for the workers who were deployed through the outsourcing agency. It is further asserted that the petitioner was a steady drunkard and severely alcoholic. He had been given many verbal warnings when he was found drunk on duty. Since, the petitioner was engaged through outsource agency, hence, the respondent is not liable to re-instate the petitioner in service as he was the employee of a contractor. The respondent for the dismissal of the claim petition.

6. Rejoinder not filed. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 31.7.2019:

1. Whether the termination of the petitioner *w.e.f.* 17.11.2014 is voilative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged? If so to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim is not maintainable as the petitioner had been engaged by a private registered agency through outsourcing, as alleged? If so, its effect thereto? . .*OPR*.

3. Whether the provisions of Industrial Disputes Act are not applicable to the respondent, as alleged? If so, its effect thereto? . .*OPR.*

4. Whether the petitioner has no locus standi to file the present petition as alleged? If so, its effect thereto? . .*OPR*.

5. Relief.

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. 1 : Redundant

Issue No. 2 : Redundant

Issue No. 3 : Redundant

Issue No .4 : Redundant

Relief : Reference is answered in negative, as per operative part of the Award

REASONS FOR FINDINGS

ISSUE NO.1 .

10. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

> **"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;**".

11. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

12. The State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974." Similarly, Rule 25 thereof which reads thus:—

> **"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."**

13. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, thus, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her case.

14. In the instant case, neither the worker nor his counsel has put in appearance before this Tribunal on 05.05.2022, despite due notice. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

15. **Most importantly**, it is particular to mention here that after striking out of issues on elucidating the pleadings of the parties, the petitioner was asked to produce the entire evidence before the Court. The case was adjourned for petitioner's evidence on 2.11.2019 and subsequently adjourned for 20.1.2020, 3.3.2020, 17.4.2020, 27.6.2020, 19.9.2020, 14.10.2020, 30.12.2020, 3.3.2021, 5.7.2021, 12.8.2021, 18.9.2021, 23.11.2021, 9.12.2021, 4.1.2022 and 5.5.2022. The perusal of case record would reveal that there are as many as **Sixteen (16**) opportunities in past two and half years have been afforded to the petitioner to adduce his evidence before the Court. It is a matter of great concern that despite number of opportunities granted to the petitioner for the two and half (2 ½) years, no evidence has been led from the side of the petitioner. Not only this, this Court *vide* order dated 9.12.2021, emphasis the parties that sufficient opportunities have already been afforded to the petitioner to lead his evidence by putting a letter of condition to the parties that two and half years have elapsed. Ld. Counsel for the petitioner was apprised of the fact that it be treated as last and final opportunity and no further opportunity shall be given and the case was adjourned for recording the evidence of the petitioner on 4.1.2022. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further by way of leading his evidence. The case is lingering upon for the fault of non than other but the petitioner himself as the parties were asked to face the trial by striking out the issues as is evident from the order dated 31.7.2019. At the cost of repetition after availing number of opportunities rising to **sixteen (16)** in number in past **two and half** years, the petitioner evidence is yet not produced. As such, I am left with no other alternate but to close the evidence of the petitioner by the order of the Court.

16. At this stage, Shri Ajay Kumar Dhiman, Ld. Counsel for the respondent stated at bar that he do not want to lead any evidence since the petitioner's evidence has been closed. To this effect his statement recorded separately.

17. The petitioner has alleged his termination to be illegal and unjustified but after availing **sixteen (16)** opportunities in the past two and half (2 ½) years has failed to lead any evidence before this Court in support of his statement of claim. In the absence of any evidence on record, the petitioner has failed to prove issue no.1, hence, issue no.1 is answered against the petitioner and in favour of respondent.

ISSUES NO. 2 to 4.

18. The onus to prove these issues were on the respondent. However, the respondent has not lead any evidence in support of these issues. Therefore, these issues are answered against the respondent.

RELIEF:

19. As a sequel to my above discussion, the claim filed by the petitioner is dismissed with the result, the reference sent by the appropriate government is answered in negative. Parties are left to bear their costs.

20. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*Labour Court, Shimla.*

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Reference Number	:	125 of 2016
Instituted on	:	12.12.2016
Decided on	:	01.07.2022

Nitin Kumar s/o Shri Karam Chand, r/o Village Kathed, P.O. Chambaghat Tehsil & District Solan, H.P. . .*Petitioner.*

VERSUS

The Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, PO Sultanpur, Tehsil & District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	None.
For the Respondent	:	Shri Ajay Kumar Dhiman, Adv.

AWARD/ORDER.

The following reference petition has been, received from the Appropriate Government *vide* notification dated 07.09.2016, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for legal adjudication:

"**Whether the termination of the services of Shri Nitin Kumar s/o Shri Karam Chand r/o Village Kathed, PO Chambaghat Tehsil & District Solan, HP, who was working as lift operator, by the Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, PO Sultanpur, Tehsil & District Solan, HP** w.e.f. **17.11.2014 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed the statement of claim.

3. Briefly stated, the case as pleaded from the side of the petitioner in his statement of claim is that the petitioner was engaged on daily wages basis by the respondent in the month of June, 2013 and he was posted in the lift section of the respondent college as left operator/operator. The petitioner had worked for more than 14 months with the respondent but on 17.11.2014, the respondent without any bonafide reason verbally terminated the services of the petitioner. Thereafter, the petitioner visited the respondent college many times in order to perform his duties but he was illegally restrained, abused and manhandled by the security guards on the instructions of the respondent management. It is further asserted that the services of the petitioner have been terminated without any notice and retrenchment compensation. The junior workmen in the same institution were retained by the respondent in violation of the provisions of sections 25-G and 25-H of the Act. In the footnote of the claim petition, the petitioner prayed for the following relief's:

"It is therefore most respectfully prayed that this Hon'ble Court be pleased to answer the reference in favour of workmen holding this retrenchment/termination to be wholly improper and unjustified and to direct the respondent to re-engage the services of the petitioner as daily wager with the respondent college and hospital at the same place and in the same capacity as he had been working prior to disengagement w.e.f. 17.11.2014 and also direct the respondent to pay the petitioner all the consequential pecuniary benefits ".

4. The lis was resisted and contested by the respondent by filing written reply wherein preliminary objections that the petitioner was engaged by a private registered agency providing outsourcing workmen for various parties, the respondent being educational institution did not cover under the industrial law, suppression of material facts, locus standi and estoppel have been raised.

5. On merits, it is asserted that the petitioner was engaged through outsource agency and he was not the workman of respondent institute. Therefore, it was in between the agency and workman to allow wok of terminate his services and not with the respondent. The respondent only pay the amount in a consolidated account payee cheque for the workers who were deployed through the outsourcing agency. It is further asserted that the petitioner was a steady drunkard and severely alcoholic. He had been given many verbal warnings when he was found drunk on duty. Since, the petitioner was engaged through outsource agency, hence, the respondent is not liable to re-instate the petitioner in service as he was the employee of a contractor. The respondent for the dismissal of the claim petition.

6. Rejoinder not filed. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 31.7.2019:

1. Whether the termination of the petitioner *w.e.f.* 17.11.2014 is voilative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged? If so to what relief the petitioner is entitled to? . .*OPP.*

2. Whether the claim is not maintainable as the petitioner had been engaged by a private registered agency through outsourcing, as alleged? If so, its effect thereto? . .*OPR*.

3. Whether the provisions of Industrial Disputes Act are not applicable to the respondent, as alleged? If so, its effect thereto? . .*OPR*.

4. Whether the petitioner has no locus standi to file the present petition as alleged? If so, its effect thereto? . .*OPR*.

5. Relief.

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

*Issue No***.** 1 : Redundant

Issue No.2 : Redundant

Issue No.3 : Redundant

Issue No.4 : Redundant

Relief : Reference is answered in negative, as per operative part of the Award

REASONS FOR FINDINGS

ISSUE NO.1 .

10. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

> **"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;**".

11. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

12. The State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974." Similarly, Rule 25 thereof which reads thus:—

> **"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails**

to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

13. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, thus, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her case.

14. In the instant case, neither the worker nor his counsel has put in appearance before this Tribunal on 05.05.2022, despite due notice. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

15. **Most importantly**, it is particular to mention here that after striking out of issues on elucidating the pleadings of the parties, the petitioner was asked to produce the entire evidence before the Court. The case was adjourned for petitioner's evidence on 2.11.2019 and subsequently adjourned for 20.1.2020, 3.3.2020, 17.4.2020, 27.6.2020, 19.9.2020, 14.10.2020, 30.12.2020, 3.3.2021, 5.7.2021, 12.8.2021, 18.9.2021, 23.11.2021, 9.12.2021, 4.1.2022 and 5.5.2022. The perusal of case record would reveal that there are as many as **Sixteen (16**) opportunities in past two and half years have been afforded to the petitioner to adduce his evidence before the Court. It is a matter of great concern that despite number of opportunities granted to the petitioner for the two and half (2 ½) years, no evidence has been led from the side of the petitioner. Not only this, this Court vide order dated 9.12.2021, emphasis the parties that sufficient opportunities have already been afforded to the petitioner to lead his evidence by putting a letter of condition to the parties that two and half years have elapsed. Ld. Counsel for the petitioner was apprised of the fact that it be treated as last and final opportunity and no further opportunity shall be given and the case was adjourned for recording the evidence of the petitioner on 4.1.2022. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further by way of leading his evidence. The case is lingering upon for the fault of non than other but the petitioner himself as the parties were asked to face the trial by striking out the issues as is evident from the order dated 31.7.2019. At the cost of repetition after availing number of opportunities rising to **sixteen (16)** in number in past **two and half** years, the petitioner evidence is yet not produced. As such, I am left with no other alternate but to close the evidence of the petitioner by the order of the Court.

16. At this stage, Shri Ajay Kumar Dhiman, Ld. Counsel for the respondent stated at bar that he do not want to lead any evidence since the petitioner's evidence has been closed. To this effect his statement recorded separately.

17. The petitioner has alleged his termination to be illegal and unjustified but after availing six**teen (16)** opportunities in the past two and half (2 ½) years has failed to lead any evidence before this Court in support of his statement of claim. In the absence of any evidence on record, the petitioner has failed to prove issue no.1, hence, issue no.1 is answered against the petitioner and in favour of respondent.

ISSUES NO. 2 to 4:

18. The onus to prove these issues were on the respondent. However, the respondent has not lead any evidence in support of these issues. Therefore, these issues are answered against the respondent.

RELIEF:

19. As a sequel to my above discussion, the claim filed by the petitioner is dismissed with the result, the reference sent by the appropriate government is answered in negative. Parties are left to bear their costs.

20. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Reference Number	:	126 of 2016.
Instituted on	:	12.12.2016.
Decided on	:	01.07.2022.

Sanjay Kumar s/o Shri Inder Singh, r/o Village Kalol, P.O. Kumarhatti, Tehsil & District Solan, H.P. . .*Petitioner*.

VERSUS

The Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, P.O. Sultanpur, Tehsil & District Solan, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner	:	None
For the Respondent	:	Shri Ajay Kumar Dhiman, Adv.

AWARD/ORDER.

The following reference petition has been, received from the Appropriate Government *vide* notification dated 07.09.2016, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for legal adjudication:

> "**Whether the termination of the services of Shri Sanjay Kumar s/o Shri Inder Singh r/o Village Kalol, PO Kumarhatti, Tehsil & District Solan, HP, who was working as lift operator, by the Principal, Maharishi Markendeshwar Medical College and Hospital, Village Lado, PO Sultanpur, Tehsil & District Solan, HP** w.e.f. **17.11.2014 through oral orders, without complying with the provisions of the Industrial Disputes Act, 1947 as alleged by the workman is legal and justified? If not, what amount of back-wages, reinstatement, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed the statement of claim.

3. Briefly stated, the case as pleaded from the side of the petitioner in his statement of claim is that the petitioner was engaged on daily wages basis by the respondent in the month of April, 2014 and he was posted in the lift section of the respondent college as lift operator/operator. The petitioner had worked for more than 14 months with the respondent but on 17.11.2014, the respondent without any bonafide reason verbally terminated the services of the petitioner. Thereafter, the petitioner visited the respondent college many times in order to perform his duties but he was illegally restrained, abused and manhandled by the security guards on the instructions of the respondent management. It is further asserted that the services of the petitioner have been terminated without any notice and retrenchment compensation. The junior workmen in the same institution were retained by the respondent in violation of the provisions of sections 25-G and 25-H of the Act. In the footnote of the claim petition, the petitioner prayed for the following relief's:

> **"It is therefore most respectfully prayed that this Hon'ble Court be pleased to answer the reference in favour of workmen holding this retrenchment/termination to be wholly improper and unjustified and to direct the respondent to re-engage the services of the petitioner as daily wager with the respondent college and hospital at the same place and in the same capacity as he had been working prior to disengagement w.e.f. 17.11.2014 and also direct the respondent to pay the petitioner all the consequential pecuniary benefits "**

4. The lis was resisted and contested by the respondent by filing written reply wherein preliminary objections that the petitioner was engaged by a private registered agency providing outsourcing workmen for various parties, the respondent being educational institution did not cover under the industrial law, suppression of material facts, locus standi and estoppel have been raised.

5. On merits, it is asserted that the petitioner was engaged through outsource agency and he was not the workman of respondent institute. Therefore, it was in between the agency and workman to allow wok of terminate his services and not with the respondent. The respondent only pay the amount in a consolidated account payee cheque for the workers who were deployed through the outsourcing agency. It is further asserted that the petitioner was a steady drunkard and severely alcoholic. He had been given many verbal warnings when he was found drunk on duty. Since, the petitioner was engaged through outsource agency, hence, the respondent is not liable to re-instate the petitioner in service as he was the employee of a contractor. The respondent for the dismissal of the claim petition.

6. Rejoinder not filed. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 31.7.2019:

1. Whether the termination of the petitioner *w.e.f.* 17.11.2014 is voilative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 as alleged? If so to what relief the petitioner is entitled to? . .*OPP*.

2. Whether the claim is not maintainable as the petitioner had been engaged by a private registered agency through outsourcing, as alleged? If so, its effect thereto? . .*OPR*.

3. Whether the provisions of Industrial Disputes Act are not applicable to the respondent, as alleged? If so, its effect thereto? . .*OPR*.

4. Whether the petitioner has no locus standi to file the present petition as alleged? If so, its effect thereto? . .*OPR*.

5. Relief

7. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

8. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

9. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 : Redundant

Issue No.2 : Redundant

Issue No.3 : Redundant

Issue No.4 : Redundant

Relief : Reference is answered in negative, as per operative part of the Award

REASONS FOR FINDINGS

ISSUE NO.1 :

10. At the very inception, it will be apt to take note of the relevant provisions of the Industrial Disputes Act, 1947. Section 2 (b) of the Act, which defines the Award as hereunder:—

> **"(b) "award" means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;**".

11. Furthermore, Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or

National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit.

12. The State of Himachal Pradesh has framed rules called "The Industrial Disputes Rules, 1974." Similarly, Rule 25 thereof which reads thus:—

> **"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."**

13. Rule 25 of the Industrial Disputes Rules, 1974 authorizes the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Labour Court to presume that all the parties are present before it although, infact, it is not true, and thus make an ex parte award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Court, thus, has to imagine that the worker is present, he is unwilling to file the statement of claim, adduce evidence or argue her case.

14. In the instant case, neither the worker nor his counsel has put in appearance before this Tribunal on 05.05.2022, despite due notice. In these circumstances, the Labour Court can proceed and pass ex parte award on its merits.

15. **Most importantly**, it is particular to mention here that after striking out of issues on elucidating the pleadings of the parties, the petitioner was asked to produce the entire evidence before the Court. The case was adjourned for petitioner's evidence on 2.11.2019 and subsequently adjourned for 20.1.2020, 3.3.2020, 17.4.2020, 27.6.2020, 19.9.2020, 14.10.2020, 30.12.2020, 3.3.2021, 5.7.2021, 12.8.2021, 18.9.2021, 23.11.2021, 9.12.2021, 4.1.2022 and 5.5.2022. The perusal of case record would reveal that there are as many as **Sixteen (16**) opportunities in past two and half years have been afforded to the petitioner to adduce his evidence before the Court. It is a matter of great concern that despite number of opportunities granted to the petitioner for the two and half (2 ½) years, no evidence has been led from the side of the petitioner. Not only this, this Court vide order dated 9.12.2021, emphasis the parties that sufficient opportunities have already been afforded to the petitioner to lead his evidence by putting a letter of condition to the parties that two and half years have elapsed. Ld. Counsel for the petitioner was apprised of the fact that it be treated as last and final opportunity and no further opportunity shall be given and the case was adjourned for recording the evidence of the petitioner on 4.1.2022. This Court is constrained to draw an adverse inference that the petitioner is not interested in pursuing further by way of leading his evidence. The case is lingering upon for the fault of non than other but the petitioner himself as the parties were asked to face the trial by striking out the issues as is evident from the order dated 31.7.2019. At the cost of repetition after availing number of opportunities rising to **sixteen (16)** in number in past **two and half** years, the petitioner evidence is yet not produced. As such, I am left with no other alternate but to close the evidence of the petitioner by the order of the Court.

16. At this stage, Shri Ajay Kumar Dhiman, Ld. Counsel for the respondent stated at bar that he do not want to lead any evidence since the petitioner's evidence has been closed. To this effect his statement recorded separately.

17. The petitioner has alleged his termination to be illegal and unjustified but after availing six**teen (16)** opportunities in the past two and half (2½) years has failed to lead any evidence before

this Court in support of his statement of claim. In the absence of any evidence on record, the petitioner has failed to prove issue no.1, hence, issue no.1 is answered against the petitioner and in favour of respondent.

ISSUES NO. 2 to 4:

18. The onus to prove these issues were on the respondent. However, the respondent has not lead any evidence in support of these issues. Therefore, these issues are answered against the respondent.

RELIEF:

19. As a sequel to my above discussion, the claim filed by the petitioner is dismissed with the result, the reference sent by the appropriate government is answered in negative. Parties are left to bear their costs.

20. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Application Number	:	46 of 2019.
Instituted on	:	29.4.2019.
Decided on	:	1.7.2022.

Bhim Singh s/o Shri Ganga Ram, r/o Village Tatwa, P.O. Korag, Tehsil Sangrah, District Sirmour, H.P. . .*Petitioner***.**

VERSUS

1. The Sr. Executive Engineer, HPPWD, Division Sangrah, District Sirmaur, H.P.

2. Assistant Engineer, HPPWD, Sub Division Haripurdhar, District Sirmour, HP.
. .*Respondents*.

Claim petition on behalf of the claimant in terms of reference seeking reinstatement along-with all consequential benefits.

For the Petitioner : Shri A.K. Gupta, Advocate
For the Respondent : Shri Jasbir Singh, ADA

AWARD/ORDER.

This is an usual petition filed by the petitioner directly before this Court. It is averred that the claimant was initially appointed as Class-IV employee on daily wage basis with the respondent w.e.f. 1987 and worked till 1994. Thereafter his services were orally terminated by the respondent without any reason and without serving any prior notice and paying compensation as required under the provisions of Industrial Disputes act, 1947 (hereinafter to be referred as the Act). The respondent had engaged many fresh person after the illegal termination of the petitioner and many juniors to him were also retained in violation of provisions of sections 25-G and 25-H of the Act. The petitioner had completed 240 days in twelve calendar months and despite several requests, the respondents have not re-engaged him. It is therefore prayed that directions may kindly be issued to the respondents to re-instate the petitioner in service along-with all consequential benefits of back-wages, seniority, continuity and regularization of service in the ends of law and justice.

2. The lis was resisted and contested by the respondents by filing written reply, wherein preliminary objections regarding maintainability, delay and latches and the present petition has been filed on false and frivolous grounds have been taken. On merits, it is averred that the petitioner was engaged w.e.f. 1987 and worked till June for 158 days only. The petitioner had never completed 240 days in any calendar year and not fulfilled the mandatory requirement of section 25-B of the Act. It is denied that the services of the petitioner were orally terminated by the respondent. It is further denied that the respondents have engaged fresh hands after the petitioner had left the job. It is asserted that the petitioner during the span of twenty four years has never approached the respondent for his re-engagement. It is most respectfully prayed that the present petition may kindly be dismissed with heavy cost in the interest of justice and fair play.

3. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the statement of claim.

4. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 31.3.2021:

6. Whether the termination of the petitioner w.e.f. 1994 is voilative of the provisions of sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947, as alleged? If so, to what relief the petitioner is entitled to? . .*OPP*.

7. Whether the claim petition is not maintainable being hit by vice of delay and laches as the petitioner has approached this Court after a lapse of 24 years, as alleged? If so, its effects thereto? . .*OPR*.

8. Relief.

5. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

6. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

7. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No.1 **:** Redundant.

Issue No.2 : Redundant.

Relief : Application dismissed, as per operative part of the Award.

REASONS FOR FINDINGS

ISSUE NO.1:

8. Most importantly, it is particular to mention here that after striking out of issues on elucidating the pleadings of the parties, the petitioner was asked to produce the entire evidence before the Court. The case was adjourned for petitioner's evidence on 31.5.2021 and subsequently adjourned for 17.8.2021, 19.8.2021, 21.9.2021, 21.10.2021, 15.12.2021, 17.1.2022, 18.1.2022, 30.3.2022, 20.4.2022, 17.5.2022 and 22.6.2022. The perusal of case record would reveal that there are as many as **Twelve (12**) opportunities in past two (2) years have been afforded to the petitioner to adduce his evidence before the Court. It is a matter of great concern that despite number of opportunities granted to the petitioner for the past two (2) years, no evidence has been led from the side of the petitioner. Not only this, this Court *vide* order dated 17.5.2022, emphasis the parties that sufficient opportunities have already been afforded to the petitioner to lead his evidence by putting a letter of condition to the parties that one and quarter years have elapsed. Ld. Counsel for the petitioner was apprised of the fact that it be treated as last and final opportunity and no further opportunity shall be given and the case was adjourned for recording the evidence of the petitioner on 22.6.2022. This Court is constrained to draw inference that the petitioner is not interested in pursuing further by way of leading his evidence. As such, I have left with no other alternate but to close the evidence of the petitioner by the order of the Court which was accordingly closed *vide* order dated 22.6.2022 and the case was listed for the evidence of the respondent for 1.7.2022.

9. Shri Jasbir Singh, Ld. ADA for the respondent department *vide* separate statement has stated that he do not want to lead any evidence *i.e*. oral and documentary since the petitioner's evidence has been closed. To this effect his statement recorded separately.

10. As per the petitioner he has challenged his termination to be illegal and unjustified but after availing **twelve (12)** opportunities in the past two years, has failed to lead any evidence before this Court in support of his statement of claim. In the absence of any evidence on record, the petitioner has failed to prove issue no.1, hence, issue no.1 is answered against the petitioner and in favour of respondent.

ISSUE NO. 2:

11. The onus to prove this issue was on the respondents. However, the respondent has not lead any evidence in support of this issue. Therefore, both these issue is answered against the respondents.

RELIEF:

12. As a sequel to my above discussion, the claim filed by the petitioner is dismissed. Let a copy of this award/order be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

13. Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Reference Number : 144 of 2018
Instituted on : 02.08.2018.
Decided on : 1.7.2022

Geeta Ram s/o Shri Daulat Ram, r/o Village Chatawag, P.O. & Tehsil Thoeg District Shimla, H.P. . .*Petitioner*.

VERSUS

3. The Chief Conservator of Forests, Forest Department, Talland Shimla-2.

4. The Divisional Forest Officer, Forest Division Theog, District Shimla, HP.

5. The Range Officer, Forest Range, Theog, District Shimla, HP. . .*Respondents*.

Reference under section 10 of the Industrial Disputes Act, 1947

For the Petitioner : Shri A.K Gupta, Advocate.
For the Respondents : Shri Jasbir Singh, ADA.

AWARD/ORDER

The following reference petition has been, received from the Appropriate Government vide notification dated 17.5.2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for legal adjudication:

"**Whether the demand raised regarding the regularization of the services of Shri Geeta Ram Sharma s/o Shri Daulat Ram r/o Village Chalawag, PO & Tehsil Theog, District Shimla, H.P. by the President/General Secretary, All India Trade Union Congress,**

H.P. (Reg. No. 1825/1920) c/o Shri Geeta Ram Sharma s/o Shri Daulat Ram r/o Village Chalawag, PO & Tehsil Theog, District Shimla HP vide **demand notice dated 25.6.2017 before (i) The Chief Conservator of Forests, Forest Department Shimla-2 (ii) The Divisional Forest Officer, Theog, Forest Division Theog District Shimla HP is proper and justified? If yes, what relief the aggrieved workman is entitled to from the above employers?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed the statement of claim.

3. Briefly stated, the case as pleaded from the side of the petitioner in his statement of claim is that the petitioner was appointed as timber watcher on daily wage basis with the respondents in the month of December 2007 and worked as such till 23.4.2013 continuously with 240 days in each calendar year. From 23.4.2013 till 1.2.2014, the petitioner could not join the duty due to constant back pain and he was not able to move and remained under treatment till 30.1.2014. The petitioner had joined his duties on 1.2.2014 by submitting a medical certificate. The Government of Himachal Pradesh in the year 2012 whereby it has been decided that if any worker on daily wages has completed 240 days in each calendar years may be regularized and in the year 2017, the Government of Himachal Pradesh has issued another notification that the person on daily wage basis who have completed the five years with 240 days in each calendar year may be regularized. The petitioner had worked continuously without any break except *w.e.f.* 23.4.2013 till 1.2.2014 but his services were not regularized by the respondents despite several requests. The services of junior persons have been regularized which is illegal. In the footnote of the claim petition, the petitioner prayed for the following relief's:

"It is therefore respectfully prayed that keeping in view the aforesaid submissions the respondents be directed to regularize the services of the petitioner after the completion of five years' service with all consequential benefits including arrears of pay as above said, continuity in service and seniority by declaring the above said act of not regularizing the services of the petitioner from due date as illegal."

4. The lis was resisted and contested by the respondents by filing written reply.

5. The respondents have raised the preliminary objection qua maintainability. On merits, it is asserted that the petitioner was engaged as daily wage worker in Theog Forest Range under Theog Forest Division during December, 2007 and worked till 4/2013. The petitioner submitted the medical certificate from private hospital which is not valid *w.e.f.* 24.4.2013 to 30.1.2014 and thereafter he joined his duties on 1.2.2014 and is still working with the department. As per the policy for regularization of daily wager the petitioner had to complete 240 days in each calendar year for eight years continuously. Since, the petitioner has lost his seniority, hence, his services could not be regularized. The respondents for the dismissal of the claim petition.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply and reaffirmed and reiterated those in the statement of claim.

7. On elucidating the pleading of parties, the following issues were struck down by my Learned Predecessor for its final determination *vide* Court order dated 13.3.2020:

9. Whether the petitioner was entitled for regularization as per the policy of regularization framed by the State Government from time to time, as alleged? If so to what relief the petitioner is entitled to?

10. Whether the claim is not maintainable as the petitioner had not completed 240 days in one calendar year, as alleged? If so, its effects thereto? . .*OPR*.

11. Relief.

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the Learned Counsel for the parties and also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing the aforesaid issues, my findings on the aforesaid issues are as follows:

Issue No. : Redundant.

Issue No. 2 : Redundant.

Relief : Reference is answered in negative, as per operative part of the Award**.**

REASONS FOR FINDINGS

ISSUE NO. 1

11. Most importantly, it is particular to mention here that after striking out of issues on elucidating the pleadings of the parties, the petitioner was asked to produce the entire evidence before the Court. The case was adjourned for petitioner's evidence on 6.5.2020 and subsequently adjourned for 11.8.2020, 6.11.2020, 1.1.2021, 5.3.2021, 12.7.2021, 3.8.2021, 9.9.2021, 9.11.2021, 29.11.2021, 22.12.2021, 28.2.2022, 19.4.2022, 17.5.2022 and 22.6.2022. The perusal of case record would reveal that there are as many as **Fifteen (15**) opportunities in past two and half years have been afforded to the petitioner to adduce his evidence before the Court. It is a matter of great concern that despite number of opportunities granted to the petitioner for the two and half (2 ½) years, no evidence has been led from the side of the petitioner. Not only this, this Court *vide* orders dated 28.2.2022 and 17.5.2022, emphasis the parties that sufficient opportunities have already been afforded to the petitioner to lead his evidence by putting a letter of condition to the parties that two and half years have elapsed. Ld. Counsel for the petitioner was apprised of the fact that it be treated as last and final opportunity and no further opportunity shall be given and the case was adjourned for recording the evidence of the petitioner on 22.6.2022. This Court is constrained to draw inference that the petitioner is not interested in pursuing further by way of leading his evidence. The case is lingering upon for the fault of non than other but the petitioner himself as the parties were asked to face the trial by striking out the issues as is evident from the order dated 13.3.2020. At the cost of repetition after availing number of opportunities rising to **fifteen (15)** in number in past **two and half** years, the petitioner evidence is yet not produced. As such, I have left with no other alternate but to close the evidence of the petitioner by the order of the Court.

12. At this stage, Shri Jasbir Singh, Ld. ADA for the respondents stated at bar that he do not want to lead any evidence since the petitioner's evidence has been closed. To this effect his statement recorded separately.

13. The petitioner has raised the demand notice 25.6.2017, for regularization of his services but after availing **fifteen (15)** opportunities in the past two and half (2½) years has failed to lead any evidence before this Court in support of his statement of claim. In the absence of any evidence on record, the petitioner has failed to prove issue no.1, hence, issue no.1 is answered against the petitioner and in favour of respondent.

ISSUE NO. 2

14. The onus to prove these issues were on the respondents. However, the respondents have not lead any evidence in support of these issues. Therefore, this issue is answered against the respondent.

RELIEF:

15. As a sequel to my above discussion, the claim filed by the petitioner is dismissed with the result, the reference sent by the appropriate government is answered in negative. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

16. The reference is answered in the aforesaid terms.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-,
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Application Number	:	20 of 2018
Instituted on	:	02.04.2018
Decided on	:	01.07.2022

Bal Ram s/o Shri Narina Ram r/o Village Nagawan, P.O. Barara, Tehsil Barara, District Ambala Haryana. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmaur, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitione : Shri R.K. Khidtta, Adv.

For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 16.04.2010 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 continuously and thereafter *w.e.f.* 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2106 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** *w.e.f.* **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company** *i.e* **in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ` 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constrained and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself

abandoned the job by relinquishing his rights. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand)

Issue No. 3 No

Relief. Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner has examined two witnesses. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-1), who has stated that as per record the petitioner Balram had raised the demand notice on 11.12.2017 *vide* (PW-1/A) and *vide* (PW-1/B), the company was also summoned to appear thereof. In cross-examination, he

admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

13. Shri Devinder Kumar, appeared into the witness dock as (PW-2) as Special Power of Attorney of the petitioner Shri Bal Ram, who tendered in evidence copy of SPA (PW-2/A) and affidavit (PW-2/B), wherein he has reiterated almost all the averments as stated in the claim petition. He also tendered into evidence letter dated 13.11.2017 (PW-2/C), demand notice (PW-1/A) letter dated 18.11.2017 (PW-1/B).

14. In cross-examination, on behalf of respondent he stated that his brother used to made gear boxes. He feigned ignorance that when his brother was appointed in the company. His brother was not being paid salary and as such was terminated. He denied that his brother is working in abroad. He admitted that he do not know the terms and conditions of his service.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-1/B) and letter dated 13.11.2017 (PW-2/C). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously *w.e.f.* 16.4.2010 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **HP Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional**

Labour Court, Chennai and Anr 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors (2013) 10 SCC 324.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously *w.e.f.* 16.4.2010 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

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Present: Shri R.K. Khidtta, Ld. Csl. for petitioner.
Shri J.P. Singh AR for respondent.

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-cum-Conciliation Officer, Nahan which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact taht the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner

is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh (2005 (3) SCC 232), Haryana State Cooperative Land Development Bank Vs. Neelam (2005 (5) SCC 91), Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. (2005 (5) SCC 124), we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e*. respodnent no.2 and thereafter he was deployed with HPPCL *i.e.* respdonent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned Counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 75,000/- (Seventy Five Thousand) as lump sum compensation from the respondents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3.

43. The respodnent company had raised the preliminary objection that the application filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to

the respondent to pay a sum of ₹ **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues** *i.e.* **gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 21 of 2018
Instituted on : 02.04.2018
Decided on : 01.07.2022

Gopal S/o Shri Rameshwar Singh, r/o Village Ramdhaun, P.O. Rama, Tehsil Nahan District Sirmour, H.P. **. .***Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitioner : Shri R.K. Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order

dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 14.09.2009 as a mechanic by the respondent company at Kala Amb and worked as such till 13.9.2009 and thereafter the petitioner was again re-engaged *w.e.f.* 14.9.2009 and worked continuously till 08.11.2017, and thereafter, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company** i.e. **in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No.3 No.

Relief. Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO. 1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A, wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-cum-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner Gopal had raised the demand notice on

11.12.2017 vide (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and letter dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

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20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly

the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously *w.e.f.* 14.09.2009 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P. Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla.

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that

it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-cum-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termiantion. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted

the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224,** referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e*. respondent no. 2 and thereafter he was deployed with HPPCL *i.e.* respdonent no. 1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned Counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 75,000/- (Seventy Five Thousand) as lump sum compensation from the respondents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO. 3:

43. The respondent company had raised the preliminary objection that the application filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to

the respondent to pay a sum of ₹ **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues** i.e **gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-*,*
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number	:	22 of 2018
Instituted on	:	02.04.2018
Decided on	:	01.07.2022

Ashok Kumar s/o Shri Maya Ram, r/o Village Rampur, P.O. Manglore, Tehsil Bilaspur, District Yamuna Nagar, Haryana. . .*Petitioner***.**

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m. Nahan Road, Village Moginand, Kala Amb, District Sirmaur, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitioner	:	Shri R.K Khidtta, Adv.
For the Respondent	:	Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 02.07.2013 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes.

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No. 3 No.

Relief Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Ashok Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 vide (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in the November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and complaint dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 14.9.2009 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but

due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously *w.e.f.* 02.07.2013 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-*cum*-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner

Shri J.P. Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that vide proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact taht the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner

is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in *M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224,* referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e*. respondent no. 2 and thereafter he was deployed with HPPCL i,e respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned Counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 75,000/- (Seventy Five Thousand) as lump sum compensation from the respondents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO. 3:

43. The respondent company had raised the preliminary objection that the application filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of ₹ **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA.

Application Number	:	23 of 2018
Instituted on	:	02.04.2018
Decided on	:	01.07.2022

Manoj Kumar s/o Shri Ram, r/o Village Moginand, Tehsil Nahan, District Sirmour, H.P.
. .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m. Nahan Road, Village Moginand, Kala Amb, District Sirmaur, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner	:	Shri R.K. Khidtta, Adv.
For the Respondent	:	Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order

dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 11.09.2011 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company** i.e**. in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified?

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand)

Issue No. 3 No

Relief. Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Manoj Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof.

The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and complaint dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously *w.e.f.* 11.09.2011 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly

the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously *w.e.f.* 11.09.2011 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-*cum*-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that

it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact taht the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

> "**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the work man;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and

continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. (2005 (5) SCC 100) and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in *M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224,* referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor i.e respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no. 1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculaer merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 75,000/- (Seventy Five Thousand) as lump sum compensation from the respondents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3:

43. The respondent company had raised the preliminary objection that the application filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of **₹ 75,000/- (Seventy five Thousand) as lump sum compensation** to

the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues** i.e**. gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number	:	24 of 2018
Instituted on	:	02.04.2018
Decided on	:	01.07.2022

Ajay Kumar s/o Shri Gulzar Singh, r/o Village Kakarkund, P.O. Nurhad, Tehsil Barara, District Ambala, Haryana. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitioner	:	Shri R.K. Khidtta, Adv.
For the Respondent	:	Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order

dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 02.02.2010 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and** seniority w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constrainets and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No.3 No

Relief Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Ajay Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the letter dated 13.11.2017 (PW-1/B), copy of demand notice (PW-1/C), copy of letter dated 18.11.2017, Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/C) and *vide* (PW-2/A), the company was also summoned to appear thereof. In cross-examination, he admitted that the general demands had been raised by the workers on

13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and letter dated 13.11.2017 (PW-1/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously *w.e.f.* 02.02.2010 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his

duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously *w.e.f.* 02.02.2010Ashok till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner

Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of

employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-cum-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the

workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter;—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner vide zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and

continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in **M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224,** referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor i.e respondent no. 2 and thereafter he was deployed with HPPCL *i,e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 75,000/- (Seventy Five Thousand) as lump sum compensation from the respondents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3.

43. The respdonent company had raised the preliminary objection that the application filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of ₹ **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the

award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues** i.e**. gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(Rajesh Tomar)
Presiding Judge,
Industrial Tribunal-cum-*,*
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number	:	25 of 2018
Instituted on	:	02.04.2018
Decided on	:	01.07.2022

Om Prakash s/o Shri Madan Singh, r/o Village Malowla, PO Shambhuwala, Tehsil Nahan District Sirmaur, H.P. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmaur, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act

For the Petitioner	:	Shri R.K. Khidtta, Adv.
For the Respondent	:	Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (hereinafter to be referred as the Act), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate

the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 14.09.2009 as a mechanic by the respondent company at Kala Amb and worked continuously till 07.11.2017, and thereafter, *w.e.f.* 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act, as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company** i.e**. in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ` 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes.

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No.3 No.

Relief. Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO. 1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Om Prakash has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on

11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and letter dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 14.9.2009 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly

the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously *w.e.f.* 14.09.2009 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner

Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen***

of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514, has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that vide proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

> "**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner vide zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and

continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termiantion. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3:

43. The respondent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of **₹ 75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the**

petitioner is entitled for all his legal dues i.e**. gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

_____

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number	:	26 of 2018
Instituted on	:	02.04.2018
Decided on	:	01.07.2022

Mukesh Kumar s/o Shri Darshan Lal, r/o Village Malowla, PO Shambhuwala, Tehsil Nahan District Sirmour, H;P. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner	:	Shri R.K. Khidtta, Adv.
For the Respondent	:	Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 01.07.2009 as a mechanic by the respondent company at Kala Amb and worked continuously as such till 07.11.2017, and thereafter, w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act, as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company** i.e**. in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent *w.e.f.* 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No.3 No

Relief. Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS.

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Mukesh Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and letter dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 01.07.2009 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously w.e.f. 01.07.2009 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner.

Shri J.P. Singh AR for respondent.

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him

to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e*. change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact htat the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

> "**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termiantion. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e.* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3:

43. The respdonent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of ` **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as

admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

)

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 27 of 2018
Instituted on : 02.04.2018
Decided on : 01.07.2022

Pawan Kumar s/o Shri Amar Chand r/o Village & P.O Sainwala, Tehsil Nahan District Sirmour, H.P. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner : Shri R.K Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (hereinafter to be referred as the Act), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate

the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 02.07.2012 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company w.e.f. 8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company** i.e **in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No. 3 No

Relief. Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2.

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Pawan Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers

had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and letter dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 02.07.2012 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his

duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously w.e.f. 02.07.2012 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a

person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and

continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e.* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3:

43. The respondent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to

the respondent to pay a sum of ` **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 28 of 2018
Instituted on : 02.04.2018
Decided on : 01.07.2022

Span Kumar s/o Shri Gurubaksh r/o Village & PO, Pathreri, Tehsil Naraingarh, District Yamuna Nagar, Haryana. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m. Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner : Shri R.K. Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 19.10.2015 as a mechanic by the

respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The work and conduct of the petitioner was always appreciated by the official of the respondent company and nothing contrary was ever conveyed to him. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority w.e.f. 8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ` 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes

Issue no. 2 Entitled to lump sum compensation of ` 75,000/- (Seventy Five Thousand).

Issue No. 3 No

Relief Petition is partly allowed awarding lump sum compensation of ` 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Span Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and complaint dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 19.10.2015 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously w.e.f. 19.10.2015 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble**

Delhi High Court dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

38. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e.* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the

respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3.

43. The respondent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear taht the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of **₹ 75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 29 of 2018
Instituted on : 02.04.2018
Decided on : 01.07.2022

Sohan Lal s/o Shri Mohinder Singh, r/o Village & PO, Pathreri, Tehsil Naraingarh, District Yamuna Nagar, Haryana . .*Petitioner***.**

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner : Shri R.K. Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 21.10.2012 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The work and conduct of the petitioner was always appreciated by the official of the respondent company and nothing contrary was ever conveyed to him. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017

(for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company w.e.f. 8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority** w.e.f. **8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue no. 2	Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).
Issue No.3	No
Relief	Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Sohan Lal has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of t hepetitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and complaint dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 21.10.2012 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had

worked in such capacity continuously w.e.f. 21.10.2012 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He

also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that vide proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner *vide* zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble**

Delhi High Court dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

38. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor i.e respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3:

43. The respondent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of ` **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(Rajesh Tomar)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 30 of 2018
Instituted on : 02.04.2018
Decided on : 01.07.2022

Gurpreet Singh s/o Shri Amar Singh r/o Village Sandhay P.O., Kapal Mohan, Tehsil Bilaspur, District Yamuna Nagar, Haryana. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner : Shri R.K. Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 06.11.2011 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The work and conduct of the petitioner was always appreciated by the official of the respondent company and nothing contrary was every conveyed to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company w.e.f. 8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority w.e.f. 8.11.2017 along-with full back-**

wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes

Issue no. 2 Entitled to lump sum compensation of ` 75,000/- (Seventy Five Thousand).

Issue No.3 No

Relief. Petition is partly allowed awarding lump sum compensation of ` 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Gurpreet Singh has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and complaint dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 06.11.2011 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously w.e.f. 06.11.2011 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated

2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner vide zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in

various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. (2002 (6) SCC 41), Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e.* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3:

43. The respondent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of ₹ **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**.

Application Number	:	31 of 2018
Instituted on	:	02.04.2018
Decided on	:	01.07.2022

Sanju Kumar s/o Shri Desraj r/o Village Daduwala, PO Bikrambag, Tehsil Nahan District Sirmour, H.P. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m. Nahan Road, Village Moginand, Kala Amb, District Sirmaur, H.P. . .*Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner : Shri R.K. Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 17.08.2007 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The work and conduct of the petitioner was always appreciated by the official of the respondent company and nothing contrary was ever conveyed to him. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company w.e.f. 8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority w.e.f. 8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-.**"

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1	Yes
Issue no. 2	Entitled to lump sum compensation of ` 75,000/- (Seventy Five Thousand).
Issue No. 3	No
Relief	Petition is partly allowed awarding lump sum compensation of ` 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Sanju Kumar has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-cum-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and vide (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and letter dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 17.08.2007 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1**

Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously w.e.f. 17.08.2007 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact that the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner

is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner vide zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar (200 (9) SCC 514), Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
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> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

38. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor i.e respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculier merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3:

43. The respondent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of ` **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, SHIMLA

Application Number : 32 of 2018
Instituted on : 02.04.2018
Decided on : 01.07.2022

Kasif s/o Shri Mohd. Ali r/o House No. 290/2, Mohalla Haripur, Nahan, P.O and Tehsil Nahan, District Sirmour, H.P. . .*Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . . *Respondent.*

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner : Shri R.K. Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 01.09.2008 as a mechanic by the respondent company at Kala Amb and worked as such till 07.05.2017 and thereafter the petitioner was again reengaged w.e.f. 08.05.2017 and worked as such continuously till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The work and conduct of the petitioner was always appreciated by the official of the respondent company and nothing contrary was ever conveyed to him. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company** w.e.f. **8.11.2017 may kindly be set aside and the petitioner may kindly be re-instated in service with continuity and seniority w.e.f. 8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."**

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is therefore prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. Whether the termination of the services of the petitioner by the respondent w.e.f. 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the application is not legally maintainable as alleged? . .*OPR.*

4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No. 3 No

Relief. Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Kasif has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-cum-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and letter dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously w.e.f. 01.09.2008 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously w.e.f. 01.09.2008 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K. Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He

also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated 2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact taht the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

> **"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :**
>
> **(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;**
>
> **(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and**
>
> **(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".**

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"***25B. Definition of continuous service. For the purposes of this Chapter,—***

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner vide zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble**

Delhi High Court dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

38. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor i.e respodnent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculier merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitionar is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3.

43. The respdonent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear that the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of ` **75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF SH. RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Application Number : 33 of 2018
Instituted on : 02.04.2018
Decided on : 01.07.2022.

Jai Pal s/o Shri Surjeet Ram r/o Village & P.O., Hamidpur, Tehsil Naraingarh, District Ambala, Haryana. . . *Petitioner.*

VERSUS

Kurukshetra Automobiles (P) Ltd., 4th k.m Nahan Road, Village Moginand, Kala Amb, District Sirmour, H.P. . .*Respondent*.

Claim petition under section 2-A of the Industrial Disputes Act.

For the Petitioner : Shri R.K. Khidtta, Adv.
For the Respondent : Shri Anirudh Sharma, Adv.

AWARD/ORDER

This is a claim petition under section 2-A of the Industrial Dispute Act, 1947 (**hereinafter to be referred as the Act**), filed on behalf of the petitioner for setting aside the dismissal order dated 8.11.2017 passed by the respondent and further the respondent may kindly be directed to re-instate the petitioner with all service benefits including full back-wages and wages for the period when the factory was illegally closed by the respondent company.

2. Shorn of all un-necessary details, material facts necessary for the disposal of the present claim petition are thus that the petitioner was engaged on 01.02.2015 as a mechanic by the respondent company at Kala Amb and worked as such till 07.11.2017 and thereafter w.e.f. 08.11.2017, the services of the petitioner have been orally terminated by the respondent without following the mandatory provisions of the Act as well as other service rules applicable to the petitioner. The work and conduct of the petitioner was always appreciated by the official of the respondent company and nothing contrary was every conveyed to the petitioner. The respondent company has illegally closed the factory in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). The petitioner had already completed 240 days in a calendar year. The oral termination of the services of the petitioner is totally illegal, unjust and against the mandatory provisions of the Act. The respondent company used to give breaks to the petitioner with intention to frustrate the rightful claim of the petitioner and right from very beginning the respondent company was exploiting the petitioner and other workers. The oral termination of the services of the petitioner is against the provisions of sections 25-F, 25-G and 25-H of the Act. The petitioner is not gainful employed. The juniors to the petitioner are still working in the company.

3. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**In view of the submissions made hereinabove, it is therefore most respectfully prayed that the illegal oral termination order of the petitioner passed by the respondent company w.e.f. 8.11.2017 may kindly be set aside and the petitioner may kindly be re-**

instated in service with continuity and seniority w.e.f. 8.11.2017 along-with full back-wages and the respondent company may also be directed to pay the wages to the petitioner for the period when the factory was illegally closed by the respondent company i.e in the month of November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days) when the petitioner and other workers were not allowed to work by the company. The respondent company may also be directed to pay the harassment charges to the petitioner to the tune of ₹ 2,00,000 and further the company may also be burdened with the cost of litigation amounting to ₹ 30,000/-."

4. The lis was resisted and contested by respondent by filing written reply on inter-alia preliminary objections of maintainability, no claim under section 2-A is received, not come to the Court with clean hands and the production activities were hampered due to change of policy by the Central Government regarding the conversion of three wheeler engine from PH3 to PH4.

5. On merits, it is submitted that the services of the petitioner were never terminated by the respondent. The petitioner be directed to his duties. There is no permission for closure of the company rather due to financial constraints and other reasons the production activities were hampered. The petitioner has not competed 240 days in a calendar year. The petitioner had himself abandoned the job by relinquishing his rights. It is, therefore, prayed that the claim petition filed by the petitioner may kindly be dismissed.

6. While filing rejoinder, the petitioner controverted the averments made thereto in the reply filed by respondent and reaffirmed and reiterated those raised in the claim petition.

7. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 19.09.2018, as under:

1. the termination of the services of the petitioner by the respondent w.e.f. 08.11.2017, without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*
3. Whether the application is not legally maintainable as alleged? . .*OPR.*
4. Relief

8. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

9. I have heard the learned counsel for the parties and have also gone through the record of the case carefully.

10. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 75,000/- (Seventy Five Thousand).

Issue No. 3 No

Relief Petition is partly allowed awarding lump sum compensation of ₹ 75,000/- (Seventy Five Thousand) as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 & 2:

11. Both these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

12. To substantiate its case, the petitioner namely Shri Jai Pal has appeared in the witness box as (PW-1) and tendered into evidence his sworn in affidavit (PW-1/A), wherein he reiterated almost all the averments as made in the claim petition. He also tendered into evidence the copy of demand notice (PW-1/B), copy of complaints Mark- PX and Mark-PY.

13. In cross-examination, on behalf of respondent he admitted that some workers including the workers of Assembly Section were working in the factory when the respondent company had closed the factory. He further admitted that before the Labour Inspector-*cum*-Conciliation Officer the workers have stated that they want to settle the issue after accepting full & final dues. He also admitted that he had offered to join the duties before the Lok Adalat as well as before this Court. He volunteered that he is ready to join the duties only after getting the full back-wages.

14. Shri Bhupesh Kumar, Labour Inspector, Nahan, has appeared into the witness box as (PW-2), who has stated that as per record the petitioner had raised the demand notice on 11.12.2017 *vide* (PW-1/B) and *vide* (PW-2/A), the company was also summoned to appear thereof. The complaint dated 13.11.2017 (PW-2/B) was also received by their office. In cross-examination, he admitted that the general demands had been raised by the workers on 13.11.2017. He denied that the department had received letter dated 14.12.2017 (R-1). He admitted that on 5.12.2017, workers had been given an offer to join duties. He also admitted that the payments were offered to five workmen.

15. In order to rebut, Shri Parkash Chand, Factory Manager had appeared in the witness box as (RW-1) and tendered into evidence his sworn in affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply. He also tendered in evidence authority letter (RW-1/B), rejection list Mark RA and FIR Mark RB.

16. During cross-examination, he admitted that the petitioner was initially engaged with the respondent company since 2010. He further admitted that the petitioner had worked with the respondent company till 8.11.2017. He denied that the petitioner was orally terminated from the respondent company. He further denied that they did not allow the petitioner to join back his duties. He admitted that neither any show cause notice nor any chargesheet was served to the petitioner. He further admitted that the petitioner was not paid the retrenchment compensation. He also denied that the juniors of the petitioner are still working in the company. He admitted that the respondent company remained closed in November, 2016 (full month), Jan., 2017 (for 15 days), March 2017 (for 20 days), April, 2017 (for full month), June, 2017 (for 12 days) and August, 2017 (for 8 days). He admitted that the petitioner was not paid any salary of this period and no permission was sought from Labour Commissioner to close the company.

17. In documentary proof, the petitioner has relied upon demand notice (PW-1/A), notice of appearance (PW-2/A) and complaint dated 13.11.2017 (PW-2/B). On the other hand, the respondent had relied upon rejection list Mark-RA and FIR Mark-RB.

18. This is the entire oral as well as documentary evidence adduced from the side of the parties.

19. Shri R.K. Khidtta, Learned counsel for the petitioner has contended with all vehemence that the petitioner had been engaged as mechanic by the respondent company and he had worked continuously *w.e.f.* 01.02.2015 till 8.11.2017, on which date his services were terminated by the respondent company without following the mandatory provisions of the Act. The petitioner has completed 240 days in each calendar year. The termination of the services of the petitioner without conducting any domestic enquiry is totally illegal and unjust. He further contended that the respondent has closed its establishment many times during lock-down period and no salary has been paid to the petitioner during the period of closure and even before closing down the unit, no permission of closure was obtained from the Labour Department. In support of his contention he has also relied upon case law titled as State of **H.P. Vs. Dev Raj and Ors. Passed in CPW No. 841 of 2017 by our own Hon'ble High Court, State of MP through Principal Secretary Vs. Kripa Ram 2020 LLR 24, B. Palaniswamy Vs. Presiding Officer-1 Additional Labour Court, Chennai and Anr. 2022 LLR 284 and Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya and Ors. (2013) 10 SCC 324**.

20. *Per contra*, Shri Anirudh Sharma, Ld. Counsel for the respondent argued that the respondent company deals in the business of manufacturing of BS-3 engines of three wheeler but due to change in the policy of the Central Government in manufacturing of three wheelers engines from BS-3 to BS-4, the respondent company had suffered losses and to get the approval for production of new BS-4 model about 4 to 6 months' time were elapsed and the production activities were hampered. There are 21 employees who filed the complaint against the respondent company before the Conciliation Officer, Nahan praying therein to pay the full & final dues and accordingly the respondent company prepared full & final. The services of the petitioner were never terminated rather the respondent had offered employment to the petitioner but the petitioner failed to join his duties. The factory was closed due to unavoidable circumstances. He prayed for the dismissal of the claim petition.

21. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondent and have also scrutinized the entire case record with minute care, caution and circumspection.

22. Thus, in the attendant facts and circumstances of the case, there is absolutely no denial to the fact that the respondent company had engaged the petitioner as a mechanic and he had worked in such capacity continuously w.e.f. 01.02.2015 till 07.11.2017. There is again no denying fact that on 08.11.2017, the services of the petitioner were orally terminated by the respondent company. On the contrary, it is pleaded from the side of the respondent company that there was no termination. It is because of amendment in the policy of Central Government regarding change of engines of three wheeler from BS-3 to BS-4, the respondent company suspended the production activities. The respondent company had suffered a loss of more than Rs. Two crores, due to rejected stock. Admittedly, the production activities were adversely effected. There was a demand notice raised from the side of some of the employees before the Labour-cum-Conciliation Officer, Nahan praying therein that the management be directed to pay their full and final dues, hence, the full & final dues were prepared. The present case is not a case of oral termination rather the management had offered the employment to the petitioner by joining of duties. This fact could be gathered from the zimini orders of this case file, whereby my Learned Predecessor during the proceedings made serious efforts in this regard. It is evident from zimini order dated 09.04.2019, which reads as under:

"09.04.2019

Present: Shri R.K Khidtta, Ld. Csl. for petitioner
Shri J.P Singh AR for respondent

The petitioner's witnesses have been examined. During the course of examination, it transpires that the petitioner was willing to rejoin, hence, a bid was made for a compromise. The respondent management has offered to reengage the petitioner along-with seniority and continuity and two months wages as a good will gesture or in the alternative to bid a golden hand shake by paying full & final settlement amount already agreed before the Conciliation Officer plus one months salary. Seemingly the petitioner are not willing to compromise the matter on any of the two terms. Now, list the matter for the evidence of respondent on the next date of hearing. Be listed on 19.06.2019.

Sd/-
Presiding Judge,
Labour Court Shimla."

23. Most importantly, the pivotal question which arises for determination before this Court/Tribunal as per the averments made thereto in the pleadings is whether the petitioner was an employee of the respondent company. This fact has been duly admitted. It is now well settled that the initial burden always lies on the worker to prove employer and employee relationship. The admission is the best form of evidence. The petitioner has succeeded in proving to be the employee of the respondent company. Their Lordships of Hon'ble Supreme Court in case titled as ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514,*** has laid down that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would lie upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

24. Verily, in the instant case it was also asserted by the petitioner that he was an employee of the respondent.

25. Henceforth, it has also halfheartedly admitted by respondent witness (RW-1) that the services of the petitioner were not terminated, however, he had himself relinquished his rights. He also deposed that the services of the petitioner were not terminated but the same were suspended due to suspension of production activities. The pleadings of the respondent company coupled with the oral evidence as discussed hereinabove leaves no room in the mind of the Court that the petitioner stood duly appointed and terminated by the respondent company orally. It is a case of clear cut violation of section 25-F of the Act.

26. It was next contended by the petitioner that his services stood terminated orally without serving any notice or paying compensation as required under section 25-F of the Act. Further, no domestic enquiry has been conducted against the petitioner as per the requirement of law particularly when he was having continuous service of more than one year prior to the date of his termination. It was also contended that the persons junior to the petitioner were retained and even fresh workers have been engaged by the respondent which is in violation of provisions of sections 25-G and 25-H of the Act.

27. Conversely, it was claimed from the side of the respondent that the junior persons from the petitioner have not been retained. It is only due to unavoidable circumstances *i.e.* change in the policy, the production activities were suspended.

28. Again there is no denying fact that conciliation proceedings were initiated before the Labour-*cum*-Conciliation Officer, Nahan, which clearly postulate that *vide* proceedings dated

2.12.2017, all the workers had pressed for their demand of full & final dues. The respondent company agreed to prepare and make the payments of full & final amount to the petitioner on or before 5.7.2017. Both the parties had agreed to the said arrangement between the parties. The similar version had appeared in the proceedings dated 5.12.2017, 8.12.2017 and 29.12.2017, before the Conciliation Officer.

29. The next question which arises for determination that whether the termination of the services of the petitioner 08.11.2017, is violative of the provisions of the Act. It is an admitted fact taht the petitioner had completed 240 working days with the respondent prior to the date of his termination. It is also admitted position on record that before terminating the services of the petitioner neither any notice has been issued to him nor he was paid any compensation as required under section 25-F of the Act. The very action on the part of the respondent while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days, hence, he is also entitled for the protection of section 25-F of the Act. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

30. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar

months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

31. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did no pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

32. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

33. Now, the question arises as to what relief, the workman is entitled to? The petitioner vide zimini order dated 09.04.2019, had refused the offer of re-engagement with seniority and continuity along-with two months wages as a good will gesture but the petitioner has not accepted the same. Therefore, I have left with no otehr alernative but the award lump sum compensation keeping in view the illegal termination. Their Lordships of Hon'ble Supreme Court in a case law reported as **The Workmen of M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

34. Similarly, Their Lordship of Hon'ble Delhi High Court in the case law reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."

35. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

36. Again, their Lordships of Hon'ble Supreme Court in case law reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. ([2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

37. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

38. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

39. In the instant case, the petitioner was enaged by contractor *i.e.* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

40. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

41. With all humility, the ratio of the authorities cited supra as relied upon by the Learned counsel for the petitioner, the enuniciation on the point of law is well settled and is no longer res-integra. However, every case has its own peculiar merits and distinct characteristics. It is equally settled that the decision of the Court/Tribunal must be based on its own merits.

42. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ` 75,000/- (Seventy Five Thousand) as lump sum compensation from the respodnents

who are jonitly and severaly liable to pay the awarded amount to the petitioner. Hence, both these issues are decided accordingly.

ISSUE NO.3.

43. The respondent company had raised the preliminary obejction that the applciation filed by the petitioner under section 2-A of the Act is not legally maintainable in the present form. Keeping in view of my findings and discussion under issues No. 1 & 2, above, it is crystal clear taht the claim petition preferred by the petitioner is perfectly maintainable in the present form. Only on the ground that no reference has been received from the appropriate government, the legitimate claim of the petitioner cannot be negativated. The present claim petition has been preferred under section 2-A of the Act which is tenable and maintainable in the present form before this Court. Accordingly, this issue is answered in favour of the petitioner and against the respondent.

RELIEF

44. As a sequent effect, in the light what has been discussed hereinabove while deciding issued no.1 to 3, this Court/Tribunal hereby legitimately concludes and pass specific directions to the respondent to pay a sum of **₹ 75,000/- (Seventy five Thousand) as lump sum compensation** to the petitioner/ workman, within a period of two months from the date of announcement of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondent to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., as admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 119 of 2017
Instituted on : 01.08.2017
Decided on : 01.07.2022

Deep Ram s/o Shri Jagat Ram r/o Village Deed Baggar, P.O. Panar, Tehsil Nahan, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmour, H.P.

2. Deepak Kumar, Village Chiya Mamyan, P.O. Kansar, Tehsil Paonta Sahib, District Sirmour, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act.

For the Petitioner : Shri A.K. Gupta, Adv.
For the Respondent No.1 : Shri Manoj Chauhan, Adv.
For the Respondent No. 2 : Shri Sahil Thakur, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 18.5.2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Deep Ram s/o Shri Jagat Ram r/o Village Deed Baggar, P.O. Panar, Tehsil Nahan, District Sirmaur, H.P. who was engaged by (i) The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmaur, H.P. (Principal Employer) through Shri Deepak Kumar, Village Chiya Mamyan, P.O. Kansar, Tehsil Paonta Sahib, District Sirmaur, H.P. by Shri Deepak Kumar (contractor)** w.e.f. **30.9.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. To the fore, Shri Deep Ram (hereinafter to be referred as the petitioner) has instituted the claim petition against the Manager, Renukaji Dam Project, HPPCL (**hereinafter to be referred as respondent no.1**) and Shri Deepak Kumar, Contractor (**hereinafter to be referred as the respondent no. 2**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged by the respondent no.1 *w.e.f.* 11.07.2011 and he had worked, as such, upto the year 2015, when his services were dis-engaged on completing 629 days under different contractors and to employ the petitioner through the contractors amounts to gross unfair labour practice. The petitioner was disengaged without paying any amount of compensation and without following the mandatory provisions of the Act and since the petitioner was engaged by the HPPCL (respondent no.1), hence the respondent no.1 was liable to pay the compensation to the petitioner. Since, the date of disengagement of the petitioner, he is on the road and is not gainfully employed anywhere.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**That the petitioner may be ordered to be reinstated in service with all the benefits incidental thereof."**

5. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia preliminary objections of no cause of action, no locus standi and there was no industrial dispute have been raised.

6. On merits, it is submitted that the works of the Renukaji Dam Project was duly awarded *vide* award letters dated 6.4.2010, 30.9.2010, 17.3.2011, 27.9.2011, 30.3.2012, 24.5.2012,

17.11.2012, 6.4.2013, 9.5.2013, 26.4.2014 and 10.4.2015 to the different contractors namely S/Shri Ravinder Kumar, Sanjay Kumar, Deepak Kumar for carrying out various works like survey and investigation, land acquisition, infrastructures works, R&P plan, environment, maintenance of buildings etc. It is denied that the petitioner was engaged by the respondent no.1. It is submitted that the work was awarded to respondent no.2, who employed the petitioner to execute the awarded work. The petitioner was the employee of respondent no.2. The respondent no.1 prayed for the dismissal of the claim petition.

7. Similarly, the respondent no.2 *i.e.* Shri Deepak Kumar, Contractor has also filed the reply to the claim petition inter-alia raising preliminary objections that the respondent is a private contractor who had participated in a bid process and consequently on 16.4.2015 the work was awarded to him for assistance in maintenance of office building w.e.f. 1.4.2015 to 31.3.2016, hence, the reply respondent is neither a necessary party nor proper party and has been unnecessarily impleaded by the petitioner and the replying respondent has only outsourced the petitioner to the respondent no.1 and the employer is only respondent no.1. On merits, the averments made in the claim petition have been denied for want of knowledge. It is therefore prayed that the petition may kindly be dismissed.

8. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

9. My Learned predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 04.07.2018, as under:

1. Whether the termination of the petitioner w.e.f. 21.7.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? ..*OPP.*
2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*
3. Whether the petitioner was engaged by respondent no.2 to execute the work so awarded to him by respondent no.1, as alleged? . .*OPR-1.*
4. Whether the respondent no.2 is not the employer of the petitioner and has only outsourced the petitioner to respondent no.1, as alleged? . .*OPR-2.*
5. Relief

10. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

11. I have heard the learned counsel for the parties and have also gone through the record of the case and written arguments filed on behalf of the petitioner carefully.

12. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue no. 2	Entitled to lump sum compensation of ` 70,000/-. (` Seventy Thousand only).
Issue No.3	Decided accordingly
Issue No.4	Decided accordingly
Relief	Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 to 4

13. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

14. To substantiate his case, the petitioner namely Shri Deep Ram appeared into the witness dock as (PW-1) to depose that he was engaged as daily wager unskilled worker w.e.f. 11.7.2011 under H.P. Power Corporation Limited and he had worked till July, 2015. Thereafter, his services were terminated without issuance of any notice and payment of compensation. He had worked continuously without any break during the aforesaid period. His juniors are still working and he is not gainfully employed after his termination. He further deposed that the work in the project is still going on. He prayed that he may be re-instated in service along-with all consequential benefits.

15. In cross-examination, on behalf of respondent no.1, he admitted that no appointment letter was issued to him by HPPCL. He admitted that the work of the project is conducted through various contractors. He denied that he was engaged and terminated by the contractor. When cross-examined on behalf of respondent no.2, he admitted that he was already working under the project before awarding the contract to respondent no.2. He admitted that he was not terminated by the contractor. His wages were being paid by the Junior Engineer of HPPCL.

16. In order to rebut, Shri Deepak Kumar, Contractor had appeared in the witness box as (RW-1) and tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.2. In cross-examination, on behalf of petitioner he admitted that the petitioner had worked with the respondent w.e.f. 2010 to 2015 and the work was awarded in his favour w.e.f. 01.4.2015 to 31.03.2016. He expressed his ignorance that the petitioner had worked with HPPCL before he was engaged by him. The petitioner had worked under him for three months. When cross-examined on behalf of respondent no.1, he admitted that he had participated in the bid and the employees engaged by him were already working with HPPCL under different contractors. He admitted that the payments from HPPCL were paid to him directly and the payments were released to the employees by him accordingly for the period they had worked with him.

17. Shri Sanjeev Kumar, Dy. General Manager of respondent no.1 has appeared into the witness box as RW-2 and tendered in evidence his affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence letters (RW-2/AA) to (RW-2/J) and agreements (RW-2/K) to (RW-2/P). In cross-examination on behalf of petitioner he expressed his ignorance that the petitioner had worked with HPPCL from the year 2010 to 2015. He volunteered that the petitioner was the employee of the contractor and not of HPPCL. The services of the petitioner were engaged through contractor vide letter dated 6.4.2010. No licence was obtained from the concerned authority to engage the labourers under the Contract Labour (Regulation and Abolition) Act. He volunteered that they have awarded the works to the contractors by following the procedure. He denied that the petitioner was the employee of HPPCL and his services were terminated by HPPCL. No notice was issued for change of contractors to the petitioner. The wages and other service beenfits were given to the petitioner by the contractors.

18. This is the entire oral as well as documentary evidence led from the side of the parties.

19. Shri Ashwani Kumar Gupta, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged by respondent no.1 in the year 2011 and his services

were illegally terminated by the respondent no.1 by an oral dismissal order in the year 2015. The respondent no.1 has failed to prove on record that the petitioner was engaged by the contractors. He further argued that the respondent no.1 being the model employer is liable to re-instate the services of the petitioner. He also contended that no agreement was executed. He placed reliance to the law laid down by the Hon'ble High Court of Punjab & Haryana in case titled as **Food Corporation of India, Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another (1987) 2 SLR 678, Silver Jubilee Tailoring House and Ors Vs. Chief Inspector of Shop and Establishments and another (1974) AIR SC 37, D.C Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal Madras (1966) AIR (SC) 370, Hussainbhai Calicut Vs. The Alath Factory Thezhilali Union Kozhidode and Ors. (1978) AIR (SC) 1410, Food Corporation of India Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another, (1987) 2 SLR 678, Bhilwara Dugdh Utpadak Sahakari S Ltd Vs. Vinod Kumar Sharma by LRS and Ors. (2011) AIR (SCW) 5288 and Ram Manohar Lohia Joint Hospital and Ors Vs. Munna Prasad Saini and anr. Civil Appeal No. 5810 of 2021**.

20. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent no.1. He further argued that the petitioner was never engaged by the respondent no.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent no.1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

21. Shri Sahil Thakur, Ld. Counsel for the respondent no.2, has vociferously urged that the petitioner neither pleaded nor proved on record that he was engaged by respondent no.2. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.2. He also prayed for the dismissal of the claim petition.

22. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 2 and have also scrutinized the entire case record with minute care, caution and circumspection.

23. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to make an attempt to prove that the petitioner has been engaged and working with the respondent no.1 till the time of his termination. The respondent no.1 *i.e.* Renukaji Dam Project under HPPCL had engaged the services of the petitioner who worked there for four years *i.e.* 2011 to 2015. However, the petitioner himself deposed that respondent no.1 *i.e.* HPPCL had engaged his services, in his deposition before this Court as PW-1. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent no.1 and engaged by him. He has also admitted that the work of the project is conducted through various contractors.

24. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondent no.1 (principal employer) and respondent no.2 (contractor) w.e.f. 30.9.2015, without complying with the provisions of the Act, the petitioner having been engaged as a unskilled worker by the principal employer *i.e*. Renukaji Dam Project, HPPCL through the contractor namely Shri Deepak Kumar, (Respondent no.2). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent no.1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not?

It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact the petitioner has also admitted in his cross-examination that no appointment letter had been issued to him by HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent no.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

25. The next question which arises for determiantion that whether the termination of the services of the petitioner *w.e.f.* 30.9.2015, is violative of the provisions of the Act. Amongst arraying the contractor as the contesting respondent, who while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent no. 2 and deployed with respodnent no.1. No legal or vested rights of the petitioner have been infringed by the respondent no.2 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent no.2 admitted that he was working with respondent no.1 and he was engaged by respondent no.1. He was not engaged by respondent no.2. The contractor is not known to him personally. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent and clinching evidence to establish on record that he was engaged by respondent no.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent no.1. Mere oral deposition in the absence of documentary proof carries no effect in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent no.1 are fully corroborated by the respondent no.1 witness Shri Sanjeev Kumar, Dy. General Manager, HPPCL (RW-1), wherein he has categorically stated that the petitioner was never engaged by respondent no.1. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent no.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Admittedly, the respondent no.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractor. It is now fairly established that the services of the petitioner were engaged by the contractor and deployed with HPPCL. It is also admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

26. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

27. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

28. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

29. So far as concerning the contention raised before me by the Ld. Counsel for the petitioner Shri Ashwani Kumar Gupta, who strenuously argued that the petitioner was engaged by

HPPCL as there is no agreement executed between the parties that the petitioner was the employee of contractor and not HPPCL. No licence has been obtained for contractual employment under the Contract Labour (Regulation & Abolition) Act. No notice of change of contractors has been issued. There is no evidence to the effect that the petitioner was engaged by the contractor and so on. In all fairness, the arguments advanced from the side of the petitioner, it is manifestly clear that the initial burden rests only on the shoulder of the petitioner to prove that he was the employee of HPPCL and not the contractor. There is no documentary proof to this effect has been placed on record. It is equally settled that a party has to stand upon his own legs to establish the plea or contention raised by him in the statement of claim and he cannot get any undue advantage out of the weakness of the case of the respondent. The petitioner is the master of his own case. He who alleges must prove it on record. The contentions raised at the bar by the Ld. Counsel for the petitioner are devoid of merits.

30. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

31. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

32. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

33. Similarly, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is**

interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

34. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

35. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

36. In the instant case, the petitioner was enaged by contractor *i.e.* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

37. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

38. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (` Seventy Thousand only) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc**., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let

a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 120 of 2017
Instituted on : 01.08.2017
Decided on : 01.07.2022

Ganga Dutt r/o Village Nihog, P.O. Ser Tandula, Tehsil Nohradhar, District Sirmour, H.P.
. .*Petitioner***.**

VERSUS

1. The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmour, H.P.
2. Chaman Lal, Village Kheri Changan, P.O. Kangta Felag, Tehsil Nahan, District Sirmaur, H.P.
. .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act.

For the Petitioner : Shri A.K. Gupta, Adv.
For the Respondent No. 1 : Shri Manoj Chauhan, Adv.
For the Respondent No. 2 : Shri Sahil Thakur, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 18.05.2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Ganga Dutt r/o Village Nihog, P.O. Ser Tandula, Tehsil Nohradhar, District Sirmaur, H.P., who was engaged by (i) The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmaur, H.P. (Principal Employer) through Shri Chaman Lal (Contractor), Village Kheri Changan, P.O. Kangta Felag, Tehsil Nahan, District Sirmaur, H.P. by Shri Chaman Lal Contractor** w.e.f. **21.7.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. To the fore, Shri Ganga Dutt (hereinafter to be referred as the petitioner) has instituted the claim petition against the Manager, Renukaji Dam Project, HPPCL (**hereinafter to be referred as respondent no.1**) and Shri Chaman Lal Contractor (**hereinafter to be referred as the respondent no. 2**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged by the respondent no.1 w.e.f. 1.12.2008 and he had worked, as such, upto the year 2015, when his services were dis-engaged on completing 1581 days under different contractors and to employ the petitioner through the contractors amounts to gross unfair labour practice. The petitioner was disengaged without paying any amount of compensation and without following the mandatory provisions of the Act and since the petitioner was engaged by the HPPCL (respondent no.1), hence the respondent no.1 was liable to pay the compensation to the petitioner. Since, the date of disengagement of the petitioner, he is on the road and is not gainfully employed anywhere.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**That the petitioner may be ordered to be reinstated in service with all the benefits incidental thereof."**

5. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia preliminary objections of no cause of action, no locus standi and there was no industrial dispute have been raised.

6. On merits, it is submitted that the works of the Renukaji Dam Project was duly awarded *vide* award letters dated 6.4.2010, 30.9.2010, 17.3.2011, 27.9.2011, 30.3.2012, 24.5.2012, 17.11.2012, 6.4.2013, 9.5.2013, 26.4.2014 and 10.4.2015 to the different contractors namely S/Shri Ravinder Kumar, Sanjay Kumar, Deepak Kumar for carrying out various works like survey and investigation, land acquisition, infrastructures works, R&P plan, environment, maintenance of buildings etc. It is denied that the petitioner was engaged by the respondent no.1. It is submitted that the work was awarded to respondent no.2, who employed the petitioner to execute the awarded work. The petitioner was the employee of respondent no.2. The respondent no.1 prayed for the dismissal of the claim petition.

7. Similarly, the respondent no.2 *i.e.* Shri Chaman Lal, Contractor has also filed the reply to the claim petition inter-alia raising preliminary objections that the respondent is a private contractor who had participated in a bid process and consequently on 16.4.2015 the work was awarded to him for assistance in maintenance of office building w.e.f. 1.4.2015 to 31.3.2016, hence, the reply respondent is neither a necessary party nor proper party and has been unnecessarily impleaded by the petitioner and the replying respondent has only outsourced the petitioner to the respondent no.1 and the employer is only respondent no.1. On merits, the averments made in the claim petition have been denied for want of knowledge. It is therefore prayed that the petition may kindly be dismissed.

8. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

9. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 04.07.2018, as under:

1. Whether the termination of the petitioner *w.e.f.* 21.7.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petitioner was engaged by respondent no.2 to execute the work so awarded to him by respondent no. 1, as alleged? . .*OPR-1.*

4. Whether the respondent no. 2 is not the employer of the petitioner and has only outsourced the petitioner to respondent no.1, as alleged? . .*OPR-2.*

5. Relief

10. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

11. I have heard the learned counsel for the parties and have also gone through the record of the case and written arguments filed on behalf of the petitioner carefully.

12. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes.

Issue no. 2 Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only).

Issue No. 3 Decided accordingly.

Issue No. 4 Decided accordingly.

Relief. Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 to 4:

13. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

14. To substantiate his case, the petitioner namely Shri Ganga Dutt appeared into the witness dock as (PW-1) to depose that he was engaged as daily wager unskilled worker w.e.f. 01.12.2008 under H.P. Power Corporation Limited and he had worked till July, 2015. Thereafter, his services were terminated without issuance of any notice and payment of compensation. He ahd worked continuously without any break during the aforesaid period. His juniors are still working and he is not gainfully employed after his termination. He further deposed that the work in the project is still going on. He prayed that he may be re-instated in service along-with all consequential benefits.

15. In cross-examination, on behalf of respondent no.1, he admitted that no appointment letter was issued to him by HPPCL. He admitted that the work of the project is conducted through various contractors. He denied that he was engaged and terminated by the contractor. When cross-examined on behalf of respondent no.2, he admitted that he was already working under the project before awarding the contract to respondent no.2. He admitted that he was not terminated by the contractor. His wages were being paid by the Junior Engineer of HPPCL.

16. In order to rebut, Shri Chaman Lal, Contractor had appeared in the witness box as (RW-1) and tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.2. In cross-examination, on behalf of petitioner he admitted that the petitioner had worked with the respondent w.e.f. 1.12.2008 to July, 2015 and the work was awarded in his favour w.e.f. 16.4.2015 to 17.7.2015. He expressed his ignorance that the petitioner had worked with HPPCL before he was engaged by him. The petitioner had worked under him for three months. When cross-examined on behalf of respondent no.1, he admitted that he had participated in the bid and the employees engaged by him were already working with HPPCL under different contractors. He admitted that the payments from HPPCL were paid to him directly and the payments were released to the employees by him accordingly for the period they had worked with him.

17. Shri Sanjeev Kumar, Dy. General Manager of respondent no.1 has appeared into the witness box as RW-2 and tendered in evidence his affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence letters (RW-2/AA) to (RW-2/J) and agreements (RW-2/K) to (RW-2/P). In cross-examination on behalf of petitioner he expressed his ignorance that the petitioner had worked with HPPCL from the year 2010 to 2015. He volunteered that the petitioner was the employee of the contractor and not of HPPCL. The services of the petitioner were engaged through contractor vide letter dated 6.4.2010. No licence was obtained from the concerned authority to engage the labourers under the Contract Labour (Regulation and Abolition) Act. He volunteered that they have awarded the works to the contractors by following the procedure. He denied that the petitioner was the employee of HPPCL and his services were terminated by HPPCL. No notice was issued for change of contractors to the petitioner. The wages and other service benefits were given to the petitioner by the contractors.

18. This is the entire oral as well as documentary evidence led from the side of the parties.

19. Shri Ashwani Kumar Gupta, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged by respondent no.1 in the year 2008 and his services were illegally terminated by the respondent no.1 by an oral dismissal order in the year 2015. The respondent no.1 has failed to prove on record that the petitioner was engaged by the contractors. He further argued that the respondent no.1 being the model employer is liable to re-instate the services of the petitioner. He also contended that no agreement was executed. He placed reliance to the law laid down by the Hon'ble High Court of Punjab & Haryana in case titled as **Food Corporation of India, Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another (1987) 2 SLR 678, Silver Jubilee Tailoring House and Ors Vs. Chief Inspector of Shop and Establishments and another (1974) AIR SC 37, D.C Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal Madras (1966) AIR (SC) 370, Hussainbhai Calicut Vs. The Alath Factory Thezhilali Union Kozhidode and Ors. (1978) AIR (SC) 1410, Food Corporation of India Haryana Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another, (1987) 2 SLR 678, Bhilwara Dugdh Utpadak Sahakari S Ltd Vs. Vinod Kumar Sharma by LRS and Ors. (2011) AIR (SCW) 5288 and Ram Manohar Lohia Joint Hospital and Ors Vs. Munna Prasad Saini and anr. Civil Appeal No. 5810 of 2021**.

20. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent no.1. He further argued that the petitioner was never engaged by the respondent no.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent no.1. No documentary proof showing the contribution towards EPF and ESI has been

placed on record. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

21. Shri Sahil Thakur, Ld. Counsel for the respondent no.2, has vociferously urged that the petitioner neither pleaded nor proved on record that he was engaged by respondent no.2. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.2. He also prayed for the dismissal of the claim petition.

22. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 2 and have also scrutinized the entire case record with minute care, caution and circumspection.

23. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to make an attempt to prove that the petitioner has been engaged and working with the respondent no.1 till the time of his termination. The respondent no.1 *i.e*. Renukaji Dam Project under HPPCL had engaged the services of the petitioner who worked there for seven years *i.e.* 2008 to 2015. However, the petitioner himself deposed that respondent no.1 *i.e*. HPPCL had engaged his services, in his deposition before this Court as PW-1. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent no.1 and engaged by him. He has also admitted that the work of the project is conducted through various contractors.

24. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondent no.1 (principal employer) and respondent no.2 (contractor) w.e.f. 21.7.2015, without complying with the provisions of the Act, the petitioner having been engaged as a unskilled worker by the principal employer *i.e*. Renukaji Dam Project, HPPCL through the contractor namely Shri Chaman Lal (Respondent no.2). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent no.1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact the petitioner has also admitted in his cross-examination that no appointment letter had been issued to him by HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent no.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

25. The next question which arises for determiantion that whether the termination of the services of the petitioner w.e.f. 21.7.2016, is violative of the provisions of the Act. Amongst arraying the contractor as the contesting respondent, who while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent no. 2 and deployed with respondent no.1. No legal or vested rights of the petitioner have been infringed by the respondent no.2 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent no.2 admitted that he was working with respondent no.1 and he was engaged by respondent no.1. He was not

engaged by respondent no.2. The contractor is not known to him personally. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent and clinching evidence to establish on record that he was engaged by respondent no.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent no.1. Mere oral deposition in the absence of documentary proof carries no effect in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent no.1 are fully corroborated by the respondent no.1 witness Shri Sanjeev Kumar, Dy. General Manager, HPPCL (RW-1), wherein he has categorically stated that the petitioner was never engaged by respondent no.1. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent no.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Admittedly, the respondent no.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractor. It is now fairly established that the services of the petitioner were engaged by the contractor and deployed with HPPCL. It is also admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

26. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter, —*

(1) a workman shall be said to be in continuous service for a period if he is, for that period,

in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

27. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

28. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

29. So far as concerning the contention raised before me by the Ld. Counsel for the petitioner Shri Ashwani Kumar Gupta, who strenuously argued that the petitioner was engaged by HPPCL as there is no agreement executed between the parties that the petitioner was the employee of contractor and not HPPCL. No licence has been obtained for contractual employment under the Contract Labour (Regulation & Abolition) Act. No notice of change of contractors has been issued. There is no evidence to the effect that the petitioner was engaged by the contractor and so on. In all fairness, the arguments advanced from the side of the petitioner, it is manifestly clear that the initial burden rests only on the shoulder of the petitioner to prove that he was the employee of HPPCL and not the contractor. There is no documentary proof to this effect has been placed on record. It is equally settled that a party has to stand upon his own legs to establish the plea or contention raised by him in the statement of claim and he cannot get any undue advantage out of the weakness of the case of the respondent. The petitioner is the master of his own case. He who alleges must prove it on record. The contentions raised at the bar by the Ld. Counsel for the petitioner are devoid of merits.

30. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."

31. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble**

Delhi High Court dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

32. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

33. Similarly, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

34. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

35. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

36. In the instant case, the petitioner was enaged by contractor i.e respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the

respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

37. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

38. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within a period of three months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues** *i.e.* **gratuity, leave encashment, EPF, ESI etc**., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	121 of 2017
Instituted on	:	01.08.2017
Decided on	:	01.07.2022

Man Singh s/o Shri Sohan Singh, r/o Village Deed Baggar, P.O. Panar, Tehsil Nahan, District Sirmaur, H.P. . .*Petitioner*.

VERSUS

1. The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmaur, H.P.
2. Chaman Lal, Village Kheri Changan, PO Kangta Felag, Tehsil Nahan, District Sirmour, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act.

For the Petitioner	:	Shri A.K Gupta, Adv.
For the Respondent No.1	:	Shri Manoj Chauhan, Adv**.**
For the Respondent No. 2	:	Shri Sahil Thakur, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, vide notification dated 18.5.2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of services of Shri Man Singh s/o Shri Sohan Singh r/o Village Deed Baggar, P.O. Panar, Tehsil Nahan, District Sirmour, HP who was engaged by (i) The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmour, H.P. (Principal Employer) through Shri Chaman Lal (Contractor) Village Kheri Changan, P.O. Kangta Felag, Tehsil Nahan, District Sirmour, HP** w.e.f. **21.7.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/ management?"**

2. To the fore, Shri Man Singh (hereinafter to be referred as the petitioner) has instituted the claim petition against the Manager, Renukaji Dam Project, HPPCL (**hereinafter to be referred as respondent no.1**) and Shri Chaman Lal, Contractor (**hereinafter to be referred as the respondent no.2**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged by the respondent no.1 w.e.f. 7.4.2010 and he had worked, as such, upto the year 2015, when his services were dis-engaged on completing 1098 days under different contractors and to employ the petitioner through the contractors amounts to gross unfair labour practice. The petitioner was disengaged without paying any amount of compensation and without following the mandatory provisions of the Act and since the petitioner was engaged by the HPPCL (respondent no.1), hence the respondent no.1 was liable to pay the compensation to the petitioner. Since, the date of disengagement of the petitioner, he is on the road and is not gainfully employed anywhere.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**That the petitioner may be ordered to be reinstated in service with all the benefits incidental thereof."**

5. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia preliminary objections of no cause of action, no locus standi and there was no industrial dispute have been raised.

6. On merits, it is submitted that the works of the Renukaji Dam Project was duly awarded *vide* award letters dated 6.4.2010, 30.9.2010, 17.3.2011, 27.9.2011, 30.3.2012, 24.5.2012, 17.11.2012, 6.4.2013, 9.5.2013, 26.4.2014 and 10.4.2015 to the different contractors namely S/Shri Ravinder Kumar, Sanjay Kumar, Deepak Kumar for carrying out various works like survey and investigation, land acquisition, infrastructures works, R&P plan, environment, maintenance of buildings etc. It is denied that the petitioner was engaged by the respondent no.1. It is submitted that the work was awarded to respondent no.2, who employed the petitioner to execute the awarded work. The petitioner was the employee of respondent no.2. The respondent no.1 prayed for the dismissal of the claim petition.

7. Similarly, the respondent no.2 *i.e*. Shri Chaman Lal, Contractor has also filed the reply to the claim petition wherein preliminary objections qua the petitioner not come to the Court with clean hand and maintainability have been taken. On merits, it is submitted that the workman has never been engaged by the respondent no.3, hence, there is no question of illegal termination of the services of the petitioner w.e.f. 30.6.2016. It is therefore prayed that the petition may kindly be dismissed.

8. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

9. My Learned predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 04.07.2018, as under:

1. the termination of the petitioner *w.e.f.* 21.7.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? *OPP*.

3. Whether the petitioner was engaged by respondent no.2 to execute the work so awarded to him by respondent no.1, as alleged? . .*OPR-1*.

4. Whether the respondent no.2 is not the employer of the petitioner and has only outsourced the petitioner to respondent no.1, as alleged? . .*OPR-2*.

5. Relief

10. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

11. I have heard the learned counsel for the parties and have also gone through the record of the case and written arguments filed on behalf of the petitioner carefully.

12. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only)

Issue No.3 Decided accordingly

Issue No.4 Decided accordingly

Relief. Reference is answered in affirmative, as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 to 4:

13. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

14. To substantiate his case, the petitioner namely Shri Man Singh, appeared into the witness dock as (PW-1) to depose that he was engaged as daily wager unskilled worker *w.e.f.* 7.4.2010 under H.P. Power Corporation Limited and he had worked till July, 2015. Thereafter, his services were terminated without issuance of any notice and payment of compensation. He ahd worked continuously without any break during the aforesaid period. His juniors are still working and he is not gainfully employed after his termination. He further deposed that the work in the project is still going on. He prayed that he may be re-instated in service along-with all consequential benefits.

15. In cross-examination, on behalf of respondent no.1, he admitted that no appointment letter was issued to him by HPPCL. He admitted that the work of the project is conducted through various contractors. He denied that he was engaged and terminated by the contractor. When cross-examined on behalf of respondent no.2, he admitted that he was already working under the project before awarding the contract to respondent no.2. He admitted that he was not terminated by the contractor. His wages were being paid by the Junior Engineer of HPPCL.

16. In order to rebut, Shri Chaman Lal, Contractor had appeared in the witness box as (RW-2) and tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.2. In cross-examination, on behalf of petitioner he admitted that the petitioner had worked with the respondent w.e.f. 2010 to 2015 and the work was awarded in his favour w.e.f. 16.4.2015 to 17.7.2015. He expressed his ignorance that the petitioner had worked with HPPCL before he was engaged by him. The petitioner had worked under him for three months. When cross-examined on behalf of respondent no.1, he admitted that he had participated in the bid and the employees engaged by him were already working with HPPCL under different contractors. He admitted that the payments from HPPCL were paid to him directly and the payments were released to the employees by him accordingly for the period they had worked with him.

17. Shri Sanjeev Kumar, Dy. General Manager of respondent no.1 has appeared into the witness box as RW-2 and tendered in evidence his affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence letters (RW-2/AA) to (RW-2/J) and agreements (RW-2/K) to (RW-2/P). In cross-examination on behalf of petitioner he expressed his ignorance that the petitioner had worked with HPPCL from the year 2010 to 2015. He volunteered that the petitioner was the employee of the contractor and not of HPPCL. The services of the petitioner were engaged through contractor vide letter dated 6.4.2010. No licence was obtained from the concerned authority to engage the labourers under the Contract Labour (Regulation and Abolition) Act. He volunteered that they have awarded the works to the contractors by following the procedure. He denied that the petitioner was the employee of HPPCL and his services were terminated by HPPCL. No notice was issued for change of contractors to the petitioner. The wages and other service beenfits were given to the petitioner by the contractors.

18. This is the entire oral as well as documentary evidence led from the side of the parties.

19. Shri Ashwani Kumar Gupta, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged by respondent no.1 in the year 2010 and his services were illegally terminated by the respondent no.1 by an oral dismissal order in the year 2015. The respondent no.1 has failed to prove on record that the petitioner was engaged by the contractors. He further argued that the respondent no.1 being the model employer is liable to re-instate the services of the petitioner. He also contended that no agreement was executed He placed reliance to the law laid down by the Hon'ble High Court of Punjab & Haryana in case titled as **Food Corporation of India, Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another (1987) 2 SLR 678, Silver Jubilee Tailoring House and Ors Vs. Chief Inspector of Shop and Establishments and another (1974) AIR SC 37, D.C Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal Madras (1966) AIR (SC) 370, Hussainbhai Calicut Vs. The Alath Factory Thezhilali Union Kozhidode and Ors. (1978) AIR (SC) 1410, Food Corporation of India Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another, (1987) 2 SLR 678, Bhilwara Dugdh Utpadak Sahakari S Ltd Vs. Vinod Kumar Sharma by LRS and Ors. (2011) AIR (SCW) 5288 and Ram Manohar Lohia Joint Hospital and Ors Vs. Munna Prasad Saini and anr. Civil Appeal No. 5810 of 2021**.

20. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent no.1. He further argued that the petitioner was never engaged by the respondent no.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent no.1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

21. Shri Sahil Thakur, Ld. Counsel for the respondent no.2, has vociferously urged that the petitioner neither pleaded nor proved on record that he was engaged by respondent no.2. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.2. He also prayed for the dismissal of the claim petition.

22. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 2 and have also scrutinized the entire case record with minute care, caution and circumspection.

23. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to make an attempt to prove that the petitioner has been engaged and working with the respondent no.1 till the time of his termination. The respondent no.1 *i.e.* Renukaji Dam Project under HPPCL had engaged the services of the petitioner who worked there for five years *i.e*. 2010 to 2015. However, the petitioner himself deposed that respondent no.1 *i.e*. HPPCL had engaged his services, in his deposition before this Court as PW-1. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent no.1 and engaged by him. He has also admitted that the work of the project is conducted through various contractors.

24. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondent no.1 (principal employer) respondent no.2 (contractor) *w.e.f.* 21.7.2015, without complying with the provisions of the Act, the

petitioner having been engaged as a unskilled worker by the principal employer *i.e*. Renukaji Dam Project, HPPCL through the contractor namely Shri Chaman Lal (Respondent no. 2). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent no.1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact the petitioner has also admitted in his cross-examination that no appointment letter had been issued to him by HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent no.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

25. The next question which arises for determiantion that whether the termination of the services of the petitioner *w.e.f.* 1.7.2016, is violative of the provisions of the Act. Amongst arraying the contractor as the contesting respondent, who while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent no.2 and deployed with respondent no.1. No legal or vested rights of the petitioner have been infringed by the respondent no.2 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent no.2 admitted that he was working with respondent no.1 and he was engaged by respondent no.1. He was not engaged by respondent no.2. The contractor is not known to him personally. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent and clinching evidence to establish on record that he was engaged by respondent no.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent no.1. Mere oral deposition in the absence of documentary proof carries no effect in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent no.1 are fully corroborated by the respondent no.1 witness Shri Sanjeev Kumar, Dy. General Manager, HPPCL (RW-1), wherein he has categorically stated that the petitioner was never engaged by respondent no.1. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent no.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Admittedly, the respondent no.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractor. It is now fairly established that the services of the petitioner were engaged by the contractor and deployed with HPPCL. It is also admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

26. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

27. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

28. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

29. So far as concerning the contention raised before me by the Ld. Counsel for the petitioner Shri Ashwani Kumar Gupta, who strenuously argued that the petitioner was engaged by HPPCL as there is no agreement executed between the parties that the petitioner was the employee of contractor and not HPPCL. No licence has been obtained for contractual employment under the Contract Labour (Regulation & Abolition) Act. No notice of change of contractors has been issued. There is no evidence to the effect that the petitioner was engaged by the contractor and so on. In all fairness, the arguments advanced from the side of the petitioner, it is manifestly clear that the initial burden rests only on the shoulder of the petitioner to prove that he was the employee of HPPCL and not the contractor. There is no documentary proof to this effect has been placed on record. It is equally settled that a party has to stand upon his own legs to establish the plea or contention raised by him in the statement of claim and he cannot get any undue advantage out of the weakness of the case of the respondent. The petitioner is the master of his own case. He who alleges must prove it on record. The contentions raised at the bar by the Ld. Counsel for the petitioner are devoid of merits.

30. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

31. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

32. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

33. Similarly, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases** e.g. **Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr.**

[2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."

34. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

"A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

35. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

36. In the instant case, the petitioner was enaged by contractor *i.e.* respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respdonent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

37. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

38. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents

to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc**., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**.

Reference Number	:	122 of 2017
Instituted on	:	01.08.2017
Decided on	:	01.07.2022

Rajinder Singh s/o Shri Bhim Singh, r/o Village Jaincha Mazhi, P.O. Kotla, Tehsil Nahan, District Sirmaur, H.P. . .*Petitioner*.

VERSUS

1. The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmour, H.P.
2. Sanjay Kumar, Village Mohtu, P.O. Rajana, Tehsil Sangrah, District Sirmaur, H.P.

. .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act.

For the Petitioner	:	Shri A.K. Gupta, Adv.
For the Respondent No.1	:	Shri Manoj Chauhan, Adv.
For the Respondent No.2	:	Shri Sahil Thakur, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 18.5.2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Rajinder Singh s/o Shri Bhim Singh s/o Village Jaincha Mazhi, P.O. Kotla, Tehsil Nahan, District Sirmour, H.P. who was engaged by (i) The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmaur, HP (Principal Employer) through Shri Sanjay Kumar, Village Mohtu, P.O.**

Rajana, Tehsil Sangrah, District Sirmaur, H.P. by Shri Sanjay Kumar (Contractor) w.e.f. **3.11.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. To the fore, Shri Rajinder Singh (hereinafter to be referred as the petitioner) has instituted the claim petition against the Manager, Renukaji Dam Project, HPPCL (**hereinafter to be referred as respondent no.1**) and Shri Sanjay Kumar, Contractor (**hereinafter to be referred as the respondent no.2**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged by the respondent no.1 w.e.f. 04.09.2012 and he had worked, as such, upto the year 2015, when his services were dis-engaged on completing 208 days under different contractors and to employ the petitioner through the contractors amounts to gross unfair labour practice. The petitioner was disengaged without paying any amount of compensation and without following the mandatory provisions of the Act and since the petitioner was engaged by the HPPCL (respondent no.1), hence the respondent no.1 was liable to pay the compensation to the petitioner. Since, the date of disengagement of the petitioner, he is on the road and is not gainfully employed anywhere.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**That the petitioner may be ordered to be reinstated in service with all the benefits incidental thereof."**

5. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia preliminary objections of no cause of action, no locus standi and there was no industrial dispute have been raised.

6. On merits, it is submitted that the works of the Renukaji Dam Project was duly awarded *vide* award letters dated 6.4.2010, 30.9.2010, 17.3.2011, 27.9.2011, 30.3.2012, 24.5.2012, 17.11.2012, 6.4.2013, 9.5.2013, 26.4.2014 and 10.4.2015 to the different contractors namely S/Shri Ravinder Kumar, Sanjay Kumar, Deepak Kumar for carrying out various works like survey and investigation, land acquisition, infrastructures works, R&P plan, environment, maintenance of buildings etc. It is denied that the petitioner was engaged by the respondent no.1. It is submitted that the work was awarded to respondent no.2, who employed the petitioner to execute the awarded work. The petitioner was the employee of respondent no.2. The respondent no.1 prayed for the dismissal of the claim petition.

7. Similarly, the respondent no.2 *i.e*. Shri Sanjay Kumar, Contractor has also filed the reply to the claim petition inter-alia raising preliminary objections that the respondent is a private contractor who had participated in a bid process and consequently on 26.4.2014, the work was awarded to him for providing services as a skilled man was awarded to him for a period of nine months w.e.f. 1.7.2014 to 31.3.2015, hence, the reply respondent is neither a necessary party nor proper party and has been unnecessarily impleaded by the petitioner and the replying respondent has only outsourced the petitioner to the respondent no.1 and the employer is only respondent no.1. On merits, the averments made in the claim petition have been denied for want of knowledge. It is therefore prayed that the petition may kindly be dismissed.

8. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

9. My Learned predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination vide Court order dated 04.07.2018, as under:

1. Whether the termination of the petitioner *w.e.f.* 21.7.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*
3. Whether the petitioner was engaged by respondent no.2 to execute the work so awarded to him by respondent no.1, as alleged? . .*OPR-1.*

4. Whether the respondent no.2 is not the employer of the petitioner and has only outsourced the petitioner to respondent no.1, as alleged? . .*OPR-2.*

5. Relief

10. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

11. I have heard the learned counsel for the parties and have also gone through the record of the case and written arguments filed on behalf of the petitioner carefully.

12. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no. 1 Yes.

Issue no. 2 Entitled to lump sum compensation of ₹ 70,000/-. (₹ Seventy Thousand only).

Issue No. 3 Decided accordingly.

Issue No. 4 Decided accordingly.

Relief. Reference is answered in affirmative, as per operative part of award.

REASONS FOR FINDINGS

ISSUES NO.1 to 4:

13. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

14. To substantiate his case, the petitioner namely Shri Rajinder Singh, appeared into the witness dock as (PW-1) to depose that he was engaged as daily wager unskilled worker w.e.f. 04.09.2012, under HP Power Corporation Limited and he had worked till July, 2015. Thereafter, his services were terminated without issuance of any notice and payment of compensation. He had worked continuously without any break during the aforesaid period. His juniors are still working and he is not gainfully employed after his termination. He further deposed that the work in the project is still going on. He prayed that he may be re-instated in service along-with all consequential benefits.

15. In cross-examination, on behalf of respondent no.1, he admitted that no appointment letter was issued to him by HPPCL. He admitted that the work of the project is conducted through various contractors. He denied that he was engaged and terminated by the contractor. When cross-examined on behalf of respondent no.2, he admitted that he was already working under the project before awarding the contract to respondent no.2. He admitted that he was not terminated by the contractor. His wages were being paid by the Junior Engineer of HPPCL.

16. In order to rebut, Shri Sanjay Kumar, Contractor had appeared in the witness box as (RW-1) and tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.2. In cross-examination, on behalf of petitioner he admitted that the petitioner had worked with the respondent w.e.f. 2010 to 2015 and the work was awarded in his favour w.e.f. 01.07.2014 to 31.03.2015. He expressed his ignorance that the petitioner had worked with HPPCL before he was engaged by him. The petitioner had worked under him for three months. When cross-examined on behalf of respondent no.1, he admitted that he had participated in the bid and the employees engaged by him were already working with HPPCL under different contractors. He admitted that the payments from HPPCL were paid to him directly and the payments were released to the employees by him accordingly for the period they had worked with him.

17. Shri Sanjeev Kumar, Dy. General Manager of respondent no.1 has appeared into the witness box as RW-2 and tendered in evidence his affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence letters (RW-2/AA) to (RW-2/J) and agreements (RW-2/K) to (RW-2/P). In cross-examination on behalf of petitioner he expressed his ignorance that the petitioner had worked with HPPCL from the year 2010 to 2015. He volunteered that the petitioner was the employee of the contractor and not of HPPCL. The services of the petitioner were engaged through contractor vide letter dated 6.4.2010. No licence was obtained from the concerned authority to engage the labourers under the Contract Labour (Regulation and Abolition) Act. He volunteered that they have awarded the works to the contractors by following the procedure. He denied that the petitioner was the employee of HPPCL and his services were terminated by HPPCL. No notice was issued for change of contractors to the petitioner. The wages and other service benefits were given to the petitioner by the contractors.

18. This is the entire oral as well as documentary evidence led from the side of the parties.

19. Shri Ashwani Kumar Gupta, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged by respondent no.1 w.e.f. 07.04.2010 and his services were illegally terminated by the respondent no.1 by an oral dismissal order in the year 2015. The respondent no.1 has failed to prove on record that the petitioner was engaged by the contractors. He further argued that the respondent no.1 being the model employer is liable to re-instate the services of the petitioner. He also contended that no agreement was executed He placed reliance to the law laid down by the Hon'ble High Court of Punjab & Haryana in case titled as **Food Corporation of India, Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another (1987) 2 SLR 678, Silver Jubilee Tailoring House and Ors Vs. Chief Inspector of Shop and Establishments and another (1974) AIR SC 37, D.C Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal Madras (1966) AIR (SC) 370, Hussainbhai Calicut Vs. The Alath Factory Thezhilali Union Kozhidode and Ors. (1978) AIR (SC) 1410, Food Corporation of India Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another, (1987) 2 SLR 678, Bhilwara Dugdh Utpadak Sahakari S Ltd Vs. Vinod Kumar Sharma by LRS and Ors. (2011) AIR (SCW) 5288 and Ram Manohar Lohia Joint Hospital and Ors Vs. Munna Prasad Saini and anr. Civil Appeal No. 5810 of 2021**.

20. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent no.1. He further argued that the petitioner was never engaged by the respondent no.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent no.1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

21. Shri Sahil Thakur, Ld. Counsel for the respondent no.2, has vociferously urged that the petitioner neither pleaded nor proved on record that he was engaged by respondent no.2. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.2. He also prayed for the dismissal of the claim petition.

22. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 2 and have also scrutinized the entire case record with minute care, caution and circumspection.

23. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to make an attempt to prove that the petitioner has been engaged and working with the respondent no.1 till the time of his termination. The respondent no.1 *i.e*. Renukaji Dam Project under HPPCL had engaged the services of the petitioner who worked there for seven years *i.e*. 2008 to 2015. However, the petitioner himself deposed that respondent no.1 *i.e.* HPPCL had engaged his services, in his deposition before this Court as PW-1. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent no.1 and engaged by him. He has also admitted that the work of the project is conducted through various contractors.

24. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondent no.1 (principal employer) and respondent no.2 (contractor) during September 2015, without complying with the provisions of the Act, the petitioner having been engaged as a unskilled worker by the principal employer *i.e*. Renukaji Dam Project, HPPCL through the contractor namely Shri Deepak Kumar, (Respondent no.2). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent no.1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact the petitioner has also admitted in his cross-examination that no appointment letter had been issued to him by HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent no.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

25. The next question which arises for determination that whether the termination of the services of the petitioner 03.11.2015, is violative of the provisions of the Act. Amongst arraying the contractor as the contesting respondent, who while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent no.2 and deployed with respodnent no.1. No legal or vested rights of the petitioner have been infringed by the respondent no.2 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent no.2 admitted that he was working with respondent no.1 and he was engaged by respondent no.1. He was not engaged by respondent no.2. The contractor is not known to him personally. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent and clinching evidence to establish on record that he was engaged by respondent no.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent no.1. Mere oral deposition in the absence of documentary proof carries no effect in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent no.1 are fully corroborated by the respondent no.1 witness Shri Sanjeev Kumar, Dy. General Manager, HPPCL (RW-1), wherein he has categorically stated that the petitioner was never engaged by respondent no.1. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent no.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Admittedly, the respondent no.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractor. It is now fairly established that the services of the petitioner were engaged by the contractor and deployed with HPPCL. It is also admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

26. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for

retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter;—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
(ii) two hundred and forty days, in any other case…."

27. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

28. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

29. So far as concerning the contention raised before me by the Ld. Counsel for the petitioner Shri Ashwani Kumar Gupta, who strenuously argued that the petitioner was engaged by HPPCL as there is no agreement executed between the parties that the petitioner was the employee of contractor and not HPPCL. No licence has been obtained for contractual employment under the Contract Labour (Regulation & Abolition) Act. No notice of change of contractors has been issued. There is no evidence to the effect that the petitioner was engaged by the contractor and so on. In all fairness, the arguments advanced from the side of the petitioner, it is manifestly clear that the initial burden rests only on the shoulder of the petitioner to prove that he was the employee of HPPCL and not the contractor. There is no documentary proof to this effect has been placed on record. It is equally settled that a party has to stand upon his own legs to establish the plea or contention raised by him in the statement of claim and he cannot get any undue advantage out of the weakness of the case of the respondent. The petitioner is the master of his own case. He who alleges must prove it on record. The contentions raised at the bar by the Ld. Counsel for the petitioner are devoid of merits.

30. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre &**

Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

31. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

32. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

33. Similarly, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (30 SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

34. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

35. In the exposition of law enumerated hereinbefore, now, I would like to examine the merits of the case.

36. In the instant case, the petitioner was enaged by contractor i.e respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respdonent no.1. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

37. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

38. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the responednts who are jonitly and severaly liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc**., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 123 of 2017
Instituted on : 01.08.2017
Decided on : 01.07.2022

Rama Nand s/o Shri Atma Ram r/o Village Suin, P.O. & Tehsil Sangraha, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmour, H.P.
2. Chaman Lal, Village Kheri Changan, P.O. Kangta Felag, Tehsil Nahan, District Sirmour, H.P. . .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act.

For the Petitioner : Shri A.K. Gupta, Adv.
For the Respondent No.1 : Shri Manoj Chauhan, Adv.
For the Respondent No.2 : Shri Sahil Thakur, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, *vide* notification dated 29.04.2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

"**Whether termination of services of Shri Rama Nand s/o Shri Atma Ram r/o Village Suin, P.O. & Tehsil Sangraha, District Sirmaur, H.P. who was engaged by (i) The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmaur, H.P. (Principal Employer) through Shri Chaman Lal (Contractor) Village Kheri Changan, P.O. Kangta Felag, Tehsil Nahan, District Sirmaur, H.P. by Shri Chaman Lal, Contractor** w.e.f. **21.7.2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. To the fore, Shri Rama Nand (hereinafter to be referred as the petitioner) has instituted the claim petition against the Manager, Renukaji Dam Project, HPPCL (**hereinafter to be referred as respondent no.1**) and Shri Chaman Lal Contractor (**hereinafter to be referred as the respondent no.2**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged by the respondent no.1 w.e.f. 1.12.2008 and he had worked, as such, upto the year 2015, when his services were dis-engaged on completing 1583 days under different contractors and to employ the petitioner through the contractors amounts to gross unfair labour practice. The petitioner was disengaged without paying any amount of compensation and without following the mandatory provisions of the Act and since the petitioner was engaged by the HPPCL (respondent no.1), hence the respondent no.1 was liable to pay the compensation to the petitioner. Since, the date of disengagement of the petitioner, he is on the road and is not gainfully employed anywhere.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

"**That the petitioner may be ordered to be reinstated in service with all the benefits incidental thereof."**

5. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia preliminary objections of no cause of action, no locus standi and there was no industrial dispute have been raised.

6. On merits, it is submitted that the works of the Renukaji Dam Project was duly awarded *vide* award letters dated 6.4.2010, 30.9.2010, 17.3.2011, 27.9.2011, 30.3.2012, 24.5.2012, 17.11.2012, 6.4.2013, 9.5.2013, 26.4.2014 and 10.4.2015 to the different contractors namely S/Shri Ravinder Kumar, Sanjay Kumar, Deepak Kumar for carrying out various works like survey and investigation, land acquisition, infrastructures works, R&P plan, environment, maintenance of buildings etc. It is denied that the petitioner was engaged by the respondent no.1. It is submitted that the work was awarded to respondent no.2, who employed the petitioner to execute the awarded work. The petitioner was the employee of respondent no.2. The respondent no.1 prayed for the dismissal of the claim petition.

7. Similarly, the respondent no.2 *i.e*. Shri Chaman Lal, Contractor has also filed the reply to the claim petition inter-alia raising preliminary objections that the respodnent is a private contractor who had participated in a bid process and consequently on 16.4.2015 the work was awarded to him for assistance in maintenance of office building w.e.f. 1.4.2015 to 31.3.2016, hence, the reply respondent is neither a necessary party nor proper party and has been unnecessarily impleaded by the petitioner and the replying respondent has only outsourced the petitioner to the respondent no.1 and the employer is only respondent no.1. On merits, the averments made in the claim petition have been denied for want of knowledge. It is therefore prayed that the petition may kindly be dismissed.

8. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

9. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 04.07.2018, as under:

1. Whether the termination of the petitioner w.e.f. 21.7.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP*.

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled?

3. Whether the petitioner was engaged by respondent no.2 to execute the work so awarded to him by respondent no.1, as alleged? . .*OPR*.

4. Whether the respondent no.2 is not the employer of the petitioner and has only outsourced the petitioner to respondent no.1, as alleged? . .*OPR-2*.

25. Relief

10. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

11. I have heard the learned counsel for the parties and have also gone through the record of the case and written arguments filed on behalf of the petitioner carefully.

12. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1 Yes

Issue no. 2 Entitled to lump sum compensation of ₹ 70,000/- (₹ Seventy Thousand only).

Issue No.3 Decided accordingly

Issue No.4 Decided accordingly

Relief Reference is answered in affirmative, as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 to 4

13. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

14. To substantiate his case, the petitioner namely Shri Man Singh appeared into the witness dock as (PW-1) to depose that he was engaged as daily wager unskilled worker w.e.f. 01.12.2008 under H.P. Power Corporation Limited and he had worked till July, 2015. Thereafter, his services were terminated without issuance of any notice and payment of compensation. He ahd worked continuously without any break during the aforesaid period. His juniors are still working and he is not gainfully employed after his termination. He further deposed that the work in the project is still going on. He prayed that he may be re-instated in service along-with all consequential benefits.

15. In cross-examination, on behalf of respondent no.1, he admitted that no appointment letter was issued to him by HPPCL. He admitted that the work of the project is conducted through various contractors. He denied that he was engaged and terminated by the contractor. When cross-examined on behalf of respondent no.2, he admitted that he was already working under the project before awarding the contract to respondent no.2. He admitted that he was not terminated by the contractor. His wages were being paid by the Junior Engineer of HPPCL.

16. In order to rebut, Shri Chaman Lal, Contractor had appeared in the witness box as (RW-1) and tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.2. In cross-examination, on behalf of petitioner he admitted that the petitioner had worked with the respondent w.e.f. 1.12.2008 to July, 2015 and the work was awarded in his favour w.e.f. 16.4.2015 to 17.7.2015. He expressed his ignorance that the petitioner had worked with HPPCL before he was engaged by him. The petitioner had worked under him for three months. When cross-examined on behalf of respondent no.1, he admitted that he had participated in the bid and the employees engaged by him were already working with HPPCL under different contractors. He admitted that the payments from HPPCL were paid to him directly and the payments were released to the employees by him accordingly for the period they had worked with him.

17. Shri Sanjeev Kumar, Dy. General Manager of respondent no.1 has appeared into the witness box as RW-2 and tendered in evidence his affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence letters (RW-2/AA) to (RW-2/J) and agreements (RW-2/K) to (RW-2/P). In cross-examination on behalf of petitioner he expressed his ignorance that the petitioner had worked with HPPCL from the year 2010 to 2015. He volunteered that the petitioner was the employee of the contractor and not of HPPCL. The services of the petitioner were engaged through contractor *vide* letter dated 6.4.2010. No licence was obtained from the concerned authority to engage the labourers under the Contract Labour (Regulation and Abolition) Act. He volunteered that they have awarded the works to the contractors by following the procedure. He denied that the petitioner was the employee of HPPCL and his services were terminated by HPPCL. No notice was issued for change of contractors to the petitioner. The wages and other service benefits were given to the petitioner by the contractors.

18. This is the entire oral as well as documentary evidence led from the side of the parties.

19. Shri Ashwani Kumar Gupta, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged by respondent no.1 in the year 2008 and his services were illegally terminated by the respondent no.1 by an oral dismissal order in the year 2015. The respondent no.1 has failed to prove on record that the petitioner was engaged by the contractors. He further argued that the respondent no.1 being the model employer is liable to re-instate the services of the petitioner. He also contended that no agreement was executed He placed reliance to the law laid down by the Hon'ble High Court of Punjab & Haryana in case titled as **Food Corporation of India, Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another (1987) 2 SLR 678, Silver Jubilee Tailoring House and Ors Vs. Chief Inspector of Shop and Establishments and another (1974) AIR SC 37, D.C Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal Madras (1966) AIR (SC) 370, Hussainbhai Calicut Vs. The Alath Factory Thezhilali Union Kozhidode and Ors. (1978) AIR (SC) 1410, Food Corporation of India Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another, (1987) 2 SLR 678, Bhilwara Dugdh Utpadak Sahakari S Ltd Vs. Vinod Kumar Sharma by LRS and Ors. (2011) AIR (SCW) 5288 and Ram Manohar Lohia Joint Hospital and Ors Vs. Munna Prasad Saini and anr. Civil Appeal No. 5810 of 2021**.

20. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent no.1. He further argued that the petitioner was never engaged by the respondent no.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent no.1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

21. Shri Sahil Thakur, Ld. Counsel for the respondent no.2, has vociferously urged that the petitioner neither pleaded nor proved on record that he was engaged by respondent no.2. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.2. He also prayed for the dismissal of the claim petition.

22. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 2 and have also scrutinized the entire case record with minute care, caution and circumspection.

23. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to make an attempt to prove that the petitioner has been engaged and working with the respondent no.1 till the time of his termination. The respondent no.1 *i.e*. Renukaji Dam Project

under HPPCL had engaged the services of the petitioner who worked there for seven years *i.e*. 2008 to 2015. However, the petitioner himself deposed that respondent no.1 *i.e.* HPPCL had engaged his services, in his deposition before this Court as PW-1. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent no.1 and engaged by him. He has also admitted that the work of the project is conducted through various contractors.

24. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondent no.1 (principal employer) and respondent no.2 (contractor) w.e.f. 21.7.2015, without complying with the provisions of the Act, the petitioner having been engaged as a unskilled worker by the principal employer *i.e*. Renukaji Dam Project, HPPCL through the contractor namely Shri Chaman Lal, (Respondent no.2). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent no.1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact the petitioner has also admitted in his cross-examination that no appointment letter had been issued to him by HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent no.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

25. The next question which arises for determination that whether the termination of the services of the petitioner w.e.f. 21.7.2016, is violative of the provisions of the Act. Amongst arraying the contractor as the contesting respondent, who while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent no.2 and deployed with respodnent no.1. No legal or vested rights of the petitioner have been infringed by the respondent no.2 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent no.2 admitted that he was working with respondent no.1 and he was engaged by respondent no.1. He was not engaged by respondent no.2. The contractor is not known to him personally. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent and clinching evidence to establish on record that he was engaged by respondent no.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent no.1. Mere oral deposition in the absence of documentary proof carries no effect in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent no.1 are fully corroborated by the respondent no.1 witness Shri Sanjeev Kumar Dy. General Manager, HPPCL (RW-1), wherein he has categorically stated that the petitioner was never engaged by respondent no.1. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent no.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Admittedly, the respondent no.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractor. It is now fairly established that the

services of the petitioner were engaged by the contractor and deployed with HPPCL. It is also admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

26. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

27. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the letter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

28. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

29. So far as concerning the contention raised before me by the Ld. Counsel for the petitioner Shri Ashwani Kumar Gupta, who strenuously argued that the petitioner was engaged by HPPCL as there is no agreement executed between the parties that the petitioner was the employee of contractor and not HPPCL. No licence has been obtained for contractual employment under the Contract Labour (Regulation & Abolition) Act. No notice of change of contractors has been issued. There is no evidence to the effect that the petitioner was engaged by the contractor and so on. In all fairness, the arguments advanced from the side of the petitioner, it is manifestly clear that the initial burden rests only on the shoulder of the petitioner to prove that he was the employee of HPPCL and not the contractor. There is no documentary proof to this effect has been placed on record. It is equally settled that a party has to stand upon his own legs to establish the plea or contention raised by him in the statement of claim and he cannot get any undue advantage out of the weakness of the case of the respondent. The petitioner is the master of his own case. He who alleges must prove it on record. The contentions raised at the bar by the Ld. Counsel for the petitioner are devoid of merits.

30. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

31. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

32. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

33. Similarly, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

34. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:
>
> **"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."**

35. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

36. In the instant case, the petitioner was enaged by contractor i.e respondent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitinoer had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

37. Recent developments, particularily the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

38. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respondents who are jonitly and severaly liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within a period of three months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e. gratuity, leave encashment, EPF, ESI etc**., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

IN THE COURT OF RAJESH TOMAR, PRESIDING JUDGE,
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number : 124 of 2017
Instituted on : 01.08.2017
Decided on : 01.07.2022

Rameshwar s/o Shri Jodh Singh r/o Village Deed Baggar, P.O. Panar, Tehsil Nahan, District Sirmour, H.P. . .*Petitioner.*

VERSUS

1. The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmour, H.P.
2. Sanjay Kumar, Village Mohtu, P.O. Rajana, Tehsil Sangrah, District Sirmour, H.P.

. .*Respondents.*

Reference petition under section 10 of the Industrial Disputes Act.

For the Petitioner : Shri A.K. Gupta, Adv.
For the Respondent No.1 : Shri Manoj Chauhan, Adv.
For the Respondent No.2 : Shri Sahil Thakur, Adv.

AWARD

The following reference petition has been, received from the Appropriate Government, vide notification dated 18.5.2017, under section 10 of the Industrial Disputes Act, 1947 (**hereinafter referred to be as the Act**), for its legal adjudication, which reads as under:

> "**Whether termination of services of Shri Rameshwar s/o Shri Jodh Singh r/o Village Deed Baggar, P.O. Panar, Tehsil Nahan, District Sirmaur, H.P. who was engaged by (i) The Manager, HPPCL, Renukaji Dam Project, Dadahu, District Sirmaur, H.P. (Principal Employer) through Shri Sanjay Kumar, Village Mohtu, P.O. Rajana, Tehsil Sangrah, District Sirmaur, H.P. by Shri Sanjay Kumar (contractor) during September, 2015 allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"**

2. To the fore, Shri Rameshwar (hereinafter to be referred as the petitioner) has instituted the claim petition against the Manager, Renukaji Dam Project, HPPCL (**hereinafter to be referred as respondent no.1**) and Shri Sanjay Kumar, Contractor (**hereinafter to be referred as the respondent no.2**) under the provisions of the Act.

3. Key facts necessary for the disposal of the present reference petition are thus that the petitioner was engaged by the respondent no.1 w.e.f. 07.04.2010 and he had worked, as such, upto the year 2015, when his services were dis-engaged on completing 1079 days under different contractors and to employ the petitioner through the contractors amounts to gross unfair labour practice. The petitioner was disengaged without paying any amount of compensation and without following the mandatory provisions of the Act and since the petitioner was engaged by the HPPCL (respondent no.1), hence the respondent no.1 was liable to pay the compensation to the petitioner. Since, the date of disengagement of the petitioner, he is on the road and is not gainfully employed anywhere.

4. The following prayer clause has been appended, in the footnote of the petition, which reads as under:

> "**That the petitioner may be ordered to be reinstated in service with all the benefits incidental thereof."**

5. The lis was resisted and contested by respondent No.1 by filing written reply on inter-alia preliminary objections of no cause of action, no locus standi and there was no industrial dispute have been raised.

6. On merits, it is submitted that the works of the Renukaji Dam Project was duly awarded *vide* award letters dated 6.4.2010, 30.9.2010, 17.3.2011, 27.9.2011, 30.3.2012, 24.5.2012, 17.11.2012, 6.4.2013, 9.5.2013, 26.4.2014 and 10.4.2015 to the different contractors namely S/Shri Ravinder Kumar, Sanjay Kumar, Deepak Kumar for carrying out various works like survey and investigation, land acquisition, infrastructures works, R&P plan, environment, maintenance of buildings etc. It is denied that the petitioner was engaged by the respondent no.1. It is submitted that the work was awarded to respondent no.2, who employed the petitioner to execute the awarded work. The petitioner was the employee of respondent no.2. The respondent no.1 prayed for the dismissal of the claim petition.

7. Similarly, the respondent no.2 *i.e*. Shri Sanjay Kumar, Contractor has also filed the reply to the claim petition inter-alia raising preliminary objections that the respondent is a private

contractor who had participated in a bid process and consequently on 26.4.2014, the work was awarded to him for providing services as a skilled man was awarded to him for a period of nine months w.e.f. 1.7.2014 to 31.3.2015, hence, the reply respondent is neither a necessary party nor proper party and has been unnecessarily impleaded by the petitioner and the replying respondent has only outsourced the petitioner to the respondent no.1 and the employer is only respondent no.1. On merits, the averments made in the claim petition have been denied for want of knowledge. It is therefore prayed that the petition may kindly be dismissed.

8. While filing rejoinder, the petitioner controverted the averments made thereto in the replies filed by respondents and reaffirmed and reiterated those raised in the claim petition.

9. My Learned Predecessor, on elucidating the pleading of parties, the following issues were struck down for its final determination *vide* Court order dated 04.07.2018, as under:

1. Whether the termination of the petitioner w.e.f. 21.7.2015 without complying with the provisions of the Industrial Disputes Act, 1947 is illegal and unjustified? . .*OPP.*

2. If issue no.1 is proved in affirmative, to what relief of service benefits the petitioner is entitled? . .*OPP.*

3. Whether the petitioner was engaged by respondent no.2 to execute the work so awarded to him by respondent no.1, as alleged? . .*OPR-1.*

4. Whether the respondent no.2 is not the employer of the petitioner and has only outsourced the petitioner to respondent no.1, as alleged? . .*OPR-2.*

5. Relief

10. Henceforth, parties to the dispute were asked to adduce oral as well as documentary evidence in support of their respective claims or issues so framed.

11. I have heard the learned counsel for the parties and have also gone through the record of the case and written arguments filed on behalf of the petitioner carefully.

12. For the reasons to be recorded hereinafter while discussing points for determination, my findings on the aforesaid issues are as under:

Issue no.1	Yes
Issue no. 2	Entitled to lump sum compensation of ` 70,000/-. (` Seventy Thousand only)
Issue No.3	Decided accordingly
Issue No.4	Decided accordingly
Relief.	Reference is answered in affirmative, as per operative part of award

REASONS FOR FINDINGS

ISSUES NO.1 to 4:

13. All these issues are intermingled and inter connected, as mutually existed and required the common appreciation of evidence, being taken up together for the purpose of their determination and adjudication.

14. To substantiate his case, the petitioner namely Shri Rameshwar appeared into the witness dock as (PW-1) to depose that he was engaged as daily wager unskilled worker w.e.f. 7.4.2010, under HP Power Corporation Limited and he had worked till July, 2015. Thereafter, his services were terminated without issuance of any notice and payment of compensation. He had worked continuously without any break during the aforesaid period. His juniors are still working and he is not gainfully employed after his termination. He further deposed that the work in the project is still going on. He prayed that he may be re-instated in service along-with all consequential benefits.

15. In cross-examination, on behalf of respondent no.1, he admitted that no appointment letter was issued to him by HPPCL. He admitted that the work of the project is conducted through various contractors. He denied that he was engaged and terminated by the contractor. When cross-examined on behalf of respondent no.2, he admitted that he was already working under the project before awarding the contract to respondent no.2. He admitted that he was not terminated by the contractor. His wages were being paid by the Junior Engineer of HPPCL.

16. In order to rebut, Shri Sanjay Kumar, Contractor had appeared in the witness box as (RW-1) and tendered in evidence his affidavit (RW-1/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.2. In cross-examination, on behalf of petitioner he admitted that the petitioner had worked with the respondent w.e.f. 2010 to 2015 and the work was awarded in his favour w.e.f. 01.07.2014 to 31.03.2015. He expressed his ignorance that the petitioner had worked with HPPCL before he was engaged by him. The petitioner had worked under him for three months. When cross-examined on behalf of respondent no.1, he admitted that he had participated in the bid and the employees engaged by him were already working with HPPCL under different contractors. He admitted that the payments from HPPCL were paid to him directly and the payments were released to the employees by him accordingly for the period they had worked with him.

17. Shri Sanjeev Kumar, Dy. General Manager of respondent no.1 has appeared into the witness box as RW-2 and tendered in evidence his affidavit (RW-2/A), wherein he reiterated almost all the averments as made in the reply filed by respondent no.1. He also tendered in evidence letters (RW-2/AA) to (RW-2/J) and agreements (RW-2/K) to (RW-2/P). In cross-examination on behalf of petitioner he expressed his ignorance that the petitioner had worked with HPPCL from the year 2010 to 2015. He volunteered that the petitioner was the employee of the contractor and not of HPPCL. The services of the petitioner were engaged through contractor *vide* letter dated 6.4.2010. No licence was obtained from the concerned authority to engage the labourers under the Contract Labour (Regulation and Abolition) Act. He volunteered that they have awarded the works to the contractors by following the procedure. He denied that the petitioner was the employee of HPPCL and his services were terminated by HPPCL. No notice was issued for change of contractors to the petitioner. The wages and other service benefits were given to the petitioner by the contractors.

18. This is the entire oral as well as documentary evidence led from the side of the parties.

19. Shri Ashwani Kumar Gupta, Learned counsel for the petitioner has contended with all vehemence that the petitioner was engaged by respondent no.1 w.e.f. 07.04.2010 and his services were illegally terminated by the respondent no.1 by an oral dismissal order in the year 2015. The respondent no.1 has failed to prove on record that the petitioner was engaged by the contractors. He further argued that the respondent no.1 being the model employer is liable to re-instate the services of the petitioner. He also contended that no agreement was executed He placed reliance to the law laid down by the Hon'ble High Court of Punjab & Haryana in case titled as **Food Corporation of India, Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal**

and Another (1987) 2 SLR 678, Silver Jubilee Tailoring House and Ors Vs. Chief Inspector of Shop and Establishments and another (1974) AIR SC 37, D.C Dewan Mohideen Sahib and Sons Vs. The Industrial Tribunal Madras (1966) AIR (SC) 370, Hussainbhai Calicut Vs. The Alath Factory Thezhilali Union Kozhidode and Ors. (1978) AIR (SC) 1410, Food Corporation of India Haryan Region Vs. The Presiding Officer, Central Government Industrial Tribunal and Another, (1987) 2 SLR 678, Bhilwara Dugdh Utpadak Sahakari S Ltd Vs. Vinod Kumar Sharma by LRS and Ors. (2011) AIR (SCW) 5288 and Ram Manohar Lohia Joint Hospital and Ors Vs. Munna Prasad Saini and anr. Civil Appeal No. 5810 of 2021.

20. *Per contra*, Shri Manoj Chauhan, Ld. Counsel for the respondent No.1 argued that there exists no employee-employer relationship between petitioner and respondent no.1. He further argued that the petitioner was never engaged by the respondent no.1 and no appointment letter has been issued to him and even no identity card has been placed on record by him. The petitioner has also failed to place on record the statement of account showing the salary allegedly to be paid by respondent no.1. No documentary proof showing the contribution towards EPF and ESI has been placed on record. The petitioner was the employee of the contractor, who deputed the petitioner with HPPCL. He prayed that the claim petition may kindly be dismissed.

21. Shri Sahil Thakur, Ld. Counsel for the respondent no.2, has vociferously urged that the petitioner neither pleaded nor proved on record that he was engaged by respondent no.2. As a matter of fact, the petitioner was engaged by HPPCL. The petitioner has miserably failed to prove that he was the employee of respondent no.2. He also prayed for the dismissal of the claim petition.

22. I have given my best anxious considerable thought to the respective submissions of the Learned Counsel for the petitioner, as well Learned Counsel for the respondents No. 1 & 2 and have also scrutinized the entire case record with minute care, caution and circumspection.

23. Admittedly, the petitioner by way of placing on record oral and documentary proof had tried to make an attempt to prove that the petitioner has been engaged and working with the respondent no.1 till the time of his termination. The respondent no.1 *i.e*. Renukaji Dam Project under HPPCL had engaged the services of the petitioner who worked there for seven years *i.e.* 2008 to 2015. However, the petitioner himself deposed that respondent no.1 i.e HPPCL had engaged his services, in his deposition before this Court as PW-1. According to him he was engaged by HPPCL. The respondent no.1 had issued the work orders inviting the job through contractors. However, the petitioner again twisted the fact by deposing that he was working with respondent no.1 and engaged by him. He has also admitted that the work of the project is conducted through various contractors.

24. As a matter of fact, the present reference has been sent by the appropriate government qua the termination of the services of the petitioner by the respondent no.1 (principal employer) and respondent no.2 (contractor) during September, 2015, without complying with the provisions of the Act, the petitioner having been engaged as a unskilled worker by the principal employer i.e Renukaji Dam Project, HPPCL through the contractor namely Shri Deepak Kumar, (Respondent no.2). Thus, it is abundantly clear on record that the matter in controversy has been narrowed down in a short compass that whether the respondent no.1, being principal employer had followed the basic and cardinal principles envisaged under the Act while terminating the services of the petitioner or not? It has been specifically pleaded from the side of the respondent no.1 that the petitioner had been engaged through the contractor to which the allocation of work order has been issued for providing the manpower service in the Project, being awarded for a specific period throughout the year. As a matter of fact, the work order for outsourcing various works is awarded in the beginning of any financial year considering the various service by flouting short term notice with the prior approval of the competent authority. The services of the petitioner were also outsourced through local contractors, who deployed the petitioner as per requirement, as such, the onus to deploying the manpower lies with the contractor/agency as per the terms and conditions of

the contract. Initially, the petitioner was an employee of the contractor and was deployed with HPPCL on outsource basis. In fact the petitioner has also admitted in his cross-examination that no appointment letter had been issued to him by HPPCL. Though, he has tried to improve his version by stating that he was engaged and terminated by respondent no.1 but it is merely an afterthought expression and cannot replace the earlier version as deposed by him in his cross-examination.

25. The next question which arises for determination that whether the termination of the services of the petitioner during September, 2015, is violative of the provisions of the Act. Amongst arraying the contractor as the contesting respondent, who while contesting the claim petition averred that the petitioner has neither been engaged by the replying respondent nor terminated his services. The petitioner was engaged by the respondent no.2 and deployed with respodnent no.1. No legal or vested rights of the petitioner have been infringed by the respondent no.2 in any manner. However, the petitioner as (PW-1) during cross-examination by respondent no.2 admitted that he was working with respondent no.1 and he was engaged by respondent no.1. He was not engaged by respondent no.2. The contractor is not known to him personally. All the contentions raised at bar are devoid of merits. In my humble opinion, the petitioner miserably failed to lead any cogent and clinching evidence to establish on record that he was engaged by respondent no.1. In any case, the petitioner has also failed to produce on record any documentary proof regarding his engagement, oral termination, service conditions and over all supervision and control by respondent no.1. Mere oral deposition in the absence of documentary proof carries no effect in the eyes of law. Furthermore, the averments made thereto in the reply filed by respondent no.1 are fully corroborated by the respondent no.1 witness Shri Sanjeev Kumar Dy. General Manager, HPPCL (RW-1), wherein he has categorically stated that the petitioner was never engaged by respondent no.1. The services of the petitioner were engaged on outsource basis through the contractor to whom the respondent no.1 has awarded the work orders from time to time. The petitioner was the employee of contractor and deployed with HPPCL, on outsource through contractors. Admittedly, the respondent no.1 being principal employer had engaged the services of the petitioner through the contractors though there is a denial on the part of the contractor. It is now fairly established that the services of the petitioner were engaged by the contractor and deployed with HPPCL. It is also admitted position on record that the contractor while terminating the services of the petitioner is to comply with the requirement of the law. The very action on the part of the respondents while terminating the services of the petitioner has to fall within the four corners of the definition of "retrenchment" as envisaged under section 2-oo (bb) of the Act, hence, the termination of the services of the petitioner is held to be bad and nonest in the eyes of law. Since, the petitioner has completed the requirement of days as fixed by the Government, hence, he is also entitled for the protection of section 25-F of the Act. It is also admitted fact that before retrenching the services of the petitioner neither any notice had been issued nor any compensation has been paid. Therefore, in view of the aforesaid discussion, I am of the considered opinion that the workman was terminated illegally and unjustifiably without complying with section 25-F of the Act, which provides as under:

"No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until :

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government for such authority as may be specified by the appropriate Government by notification in the Official Gazette".

26. So, in view of this enabling provision of the act, no workman employed in any industry, who has been in "continuous service" for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

"*25B. Definition of continuous service. For the purposes of this Chapter,—*

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case…."

27. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months in the preceding year from the date of his retrenchment, his services could not have been terminated unless he was served with one month's mandatory notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. Admittedly, the provisions of Section 25-F of the Act were not followed or complied with by the respondent in the latter and spirit. The respondent did not pay the retrenchment compensation to the petitioner, nor had issued any requisite notice to the petitioner.

28. In the back-drop of aforesaid events, it is held that the termination of the petitioner was in violation of the provisions of Sections 25-B and 25-F of the Act. The termination is held to be illegal, unlawful and unjustified.

29. So far as concerning the contention raised before me by the Ld. Counsel for the petitioner Shri Ashwani Kumar Gupta, who strenuously argued that the petitioner was engaged by HPPCL as there is no agreement executed between the parties that the petitioner was the employee of contractor and not HPPCL. No licence has been obtained for contractual employment under the Contract Labour (Regulation & Abolition) Act. No notice of change of contractors has been issued. There is no evidence to the effect that the petitioner was engaged by the contractor and so on. In all fairness, the arguments advanced from the side of the petitioner, it is manifestly clear that the initial burden rests only on the shoulder of the petitioner to prove that he was the employee of HPPCL and not the contractor. There is no documentary proof to this effect has been placed on record. It is equally settled that a party has to stand upon his own legs to establish the plea or contention raised by him in the statement of claim and he cannot get any undue advantage out of the weakness of the case of the respondent. The petitioner is the master of his own case. He who alleges must prove it

on record. The contentions raised at the bar by the Ld. Counsel for the petitioner are devoid of merits.

30. Now, the question arises as to what relief, the workman is entitled to? Their Lordships of Hon'ble Supreme Court in an authority reported as The Workmen of **M/s Firestone Tyre & Rubber Co. of India (Pvt.) Ltd. etc. vs. The Management & Ors. 1973 (1) SCC 813**, Hon'ble Supreme Court observed as under:

> **"10. In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in The Management of Panitole Tea Estate Vs. The workmen (1971) 1 SCC 742 within the judicial decision of a Labour Court of Tribunal."**

31. Similarly, Their Lordship of Hon'ble Delhi High Court in another authority reported as **Nehru Yuva Kendra Sangathan Vs. Union of India & Ors. 2000 IV AD (Delhi) 709, Hon'ble Delhi High Court** dealt with the question of reinstatement and back wages and observed 28 as under:

> **"The decision of the Supreme Court rendered in the 1970s and 1980s that reinstatement with back wages was the norm in cases where the termination of the services of the workman was held inoperative. The decisions rendered in the 1990s, including the decision of the Constitution Bench in the Punjab Land Development and Reclamation Corporation Ltd., Chandigarh seem to suggest that compensation in lieu of reinstatement and back wages is now the norm. In any case, since I am bound to follow the decision of the Constitution Bench, I, therefore, conclude that reinstatement is not the inevitable consequence of quashing an order of termination; compensation can be awarded in lieu of reinstatement and back wages."**

32. To combat with, I am persuaded to award compensation in lieu of reinstatement and back wages to the workman.

33. Similarly, their Lordships of Hon'ble Supreme Court in another authority reported as **M.L. Binjolkar Vs. State of Madhya Pradesh, 2005 VI (S.C.) 413**, Hon'ble Supreme Court observed in paragraph 7 as under :

> **"Though the High Court has not specifically dealt with the question as to what would be the appropriate quantum, keeping in view the law laid down by this Court in various cases e.g. Hindustan Motors Ltd. Vs. Tapanj Kumar Bhattarcharya & Anr. [2002 (6) SCC 41], Rajendra Prasad Arya Vs. State of Bihar [200 (9) SCC 514], Sonepat Cooperative Sugar Mills Ltd. Vs. Ajit Singh [2005 (3) SCC 232], Haryana State Cooperative Land Development Bank Vs. Neelam [2005 (5) SCC 91], Manager, Reserve Bank of India, Bangalore Vs. S. Mani & Ors. [2005 (5) SCC 100] and Allahabad Jal Sansthan Vs. Daya Shankar Rai & Anr. [2005 (5) SCC 124], we do not find any scope for interference. The earlier view was that whenever there is interference with the order of termination or retirement, full back wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the court has to weigh the pros and cons of each case and to take a pragmatic view."**

34. Their Lordship of Hon'ble Supreme Court in another authority reported as **U.P. State Brassware Corporation Limited and another Vs. Uday Narain Pandey, (2006) 1 SCC 479**, wherein the Hon'ble Supreme Court, observed as under:

> "A Division Bench of this Court in M.L. Binjolkar v. State of M.P. (2005) 6 SCC 224, referring to a large number of decisions, held as under:

"The earlier view was that whenever there is interference with the order of termination or retirement, fullback wages were the natural corollary. It has been laid down in the cases noted above that it would depend upon several factors and the Court has to weigh the pros and cons of each case and to take a pragmatic view."

35. In the exposition of law enumurated hereinbefore, now, I would like to examine the merits of the case.

36. In the instant case, the petitioner was enaged by contractor i.e respodnent no.2 and thereafter he was deployed with HPPCL *i.e.* respondent no.1. The petitioner had worked in the capacity of workman. Since, the services of the petitioner were not directly engaged by the respondent no.1, hence, the only remedy available with this Tribunal is to award compensation amount to the petitioner in lump sum amount.

37. Recent developments, particularly the trends particularly much after the year 2007 shows that grant of compensation in lieu of reinstatement has gained precedence, more particularly, where the services of the workmen have been terminated because of procedural defects. In the case in hand too the termination is found to be illegal in view of the provisions Act, both ends of justice would thus be met, in case the petitioner is granted compensation in lieu of reinstatement thereof. In this behalf support can ably be drawn from the judgment of the Hon'ble Supreme Court titled as **Bharat Sanchar Nigam Ltd. Vs. Bhurumal (2014) 7 SCC 177** and further reiterated lately in **P. Karupaiah (dead) through Legal Representatives Vs. General Manager, Thruuvalluvar Transport Corporation Ltd. (2018) 12 SCC 663 and Rashtrasant Tukdoji Maharaj Technical Education Samnstha, Nagpur Vs. Prashant Manikrao Kubitkar (2018) 12 SCC 294**.

38. For the foregoing reasons and keeping in view the mandate of Hon'ble Apex Court in various judgments referred to above, the petitioner is held entitled for a lump sum compensation amount of ₹ 70,000/- (₹ Seventy Thousand only) as lump sum compensation from the respodnents who are jonitly and severaly liable to pay the awarded amount to the petitioner. All these issues are decided accordingly.

RELIEF

39. As a sequel to my above discussion and findings on issues no.1 to 4, the claim of the petitioner succeeds and is hereby allowed and the petitioner is awarded lump sum compensation of **₹ 70,000/- (Rupees Seventy Thousand only) to the workman, to be paid by the respondents jointly and severally within a period of two months from the date of announcement** of the award, failing which interest at the rate of 9% (nine percent) would be payable by the respondents to the workman. This apart, it is expressly made clear that besides lump sum compensation, **the petitioner is entitled for all his legal dues i.e gratuity, leave encashment, EPF, ESI etc**., admissible, if any, in accordance with law. The reference is disposed off in the aforesaid terms. Let a copy of this award be communicated to the appropriate government for publication in official gazette. File, after completion, be consigned to records.

Ordered accordingly.

Announced in the open Court today this 1st day of July, 2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla

BEFORE SH. RAJESH TOMARPRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference No. : 149 of 2022
Instituted on : 15.3.2022
Decided on : 01.07.2022

Sumitra Devi w/o Shri Union Prasad, r/o MohallaAmarpur, Nahan, District Sirmour, H.P.
. .*Petitioner.*

VERSUS

The Occupier/Factory Manager M/s Welcure Remedies Village Bankebada, P.O. Moginand, Tehsil Nahan, District Sirmour, H.P.

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri Prateek Kumar, Advocate
For Respondent : Shri Devinder Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 8.3.2022, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Smt. Sumitra Devi w/o Shri Union Prasad r/o MohallaAmarpur, Nahan, District Sirmaur, H.P. by the Occupier/Factory Manager M/s Welcure Remedies Village Bankebada, P.O. Moginand, Tehsil Nahan, District Sirmaur, H.P.** w.e.f. **14.4.2021 without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? if not, what relief including reinstatement, seniority, back-wages and compensation the aggrieved workman is entitled to from the above employer/management**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has appeared in person whereas on behalf of respondent Shri Mukul Sood, Ld. Counsel has appeared before this Court.

3. Smt. Sumitra Devi, petitioner has categorically stated *vide* her separate statement that the industrial dispute raised by her stood amicably resolved between the parties. The petitioner has raised the industrial dispute qua her termination of service by the respondent w.e.f. 14.4.2021 without complying with the provisions of the Industrial Disputes Act, 1947 to be illegal and unjustified. The said reference was registered before this Court as reference no. 149 of 2022. The respondent company has paid a lump sum compensation of ₹ 55000/- (Rupees Fifty Five Thousand only) to her. Since, the matter stood amicably resolved between the parties, hence, she does not want to proceed further with the present reference petition. She also stated that she has received a cheque no. 001733 dated 21.6.2022 amounting to₹ 55,000/- from the respondent company.

4. Shri Rizwan Khan, Manager HR with the respondent company stated that the industrial dispute raised from the side of the petitioner has been amicably settled between the parties. As a result of which the respondent company is ready and willing to pay a sum of ₹ 55000/- (Rupees Fifty Five Thousand only) as lump sum compensation to the petitioner today in the Court. The full and final settlement amount has been paid *vide* cheque No. 001733 dated 21.6.2022 to the petitioner. To this effect his statement recorded separately.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has paida sum of ₹ 55000/- (Rupees Fifty Five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 149 of 2022.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying**₹ 55000/- (Rupees Fifty Five Thousand only).

7. The reference is answered accordingly and the award is passed as per the statements of parties and copy of cheque (PA),which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMARPRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**.

ReferenceNumber	:	164 of 2021
Instituted on	:	03.09.2021
Decided on	:	01.07.2022

Sudhir Kumar s/o Shri Ishwar Chand r/o VPO BarmaPapri, Tehsil Nahan, District Sirmaur, HP. . .*Petitioner.*

VERSUS

The Occupier/Factory Manager, M/s Super Nova Auto Industries, Village Johron, Trilokpur Road, Kala Amb, District Sirmaur, H.P. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner	:	None.
For Respondent	:	Shri Devinder Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 3.8.2021, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shri Sudhir Kumar s/o Shri Ishwar Chand r/o VPO Barma Papri, Tehsil Nahan, District Sirmaur, H.P.** w.e.f. **20.1.2021 by the Employer/Management** i.e. **M/s Super Nova Auto Industries, Village Johron, Trilokpur Road, Kala Amb, District Sirmour, H.P. without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? if not, what relief including reinstatement, seniority, back-wages and compensation the aggrieved workman is entitled to from the above employer/management**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has appeared in person whereas on behalf of respondent Shri Devinder Sharma, Ld. Counsel has appeared before this Court.

3. Shri Devinder Sharma, Ld. Counsel for the respondent has categorically stated *vide* his separate statement that the industrial dispute which has been raised by the petitioner by way of raising demand notice qua the termination of the services of petitioner by the respondent w.e.f. 20.01.2021, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified to which the appropriate government has sent a reference to this Court/Tribunal. The said reference has been registered as reference no. 164 of 2021. The industrial dispute raised from the side of the petitioner stood amicably settled and resolved between the parties. It is particular to mention that the petitioner has been paid full & final settlement amount of ₹ 31,217/- (Rupees Thirty One Thousand Two Hundred Seventeen only) in lieu of his termination, back-wages, past service benefits, compensation etc. The respondent has also placed on record various documents *i.e*. application for withdrawing the case (PA), resignation letter (PB), full & final settlement (PC), compromise deed (PD), receipt (PE), authority letter (PF) and copy of cheque (PG).

4. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has paid a sum of ₹ 31,217/- (Rupees Thirty One Thousand Two Hundred Seventeen only) as full and final settlement amount of the claim. From the aforesaid statement of the Ld. Counsel for the respondent, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 164 of 2021.

5. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying** ₹ 31,217/- (Rupees Thirty One Thousand Two Hundred Seventeen only).

6. The reference is answered accordingly and the award is passed as per the statement of Ld. Counsel for respondent and documents (PA), (PB), (PC), (PD), (PE), (PF) and (PG), which shall form the integral part and parcel of this award.

7. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMARPRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

ReferenceNumber : 11 of 2021
Instituted on : 08.01.2021
Decided on : 01.07.2022

Karan Kumar s/o Shri Ram Pravesh r/o Village Khajawati, P.O. Koshia, Tehsil Bodhgaya, District Gaya Bihar. . .*Petitioner.*

VERSUS

The Factory Manager/Managing Director M/s Manjushree Technopack Ltd., Plot No. 70 & 71B & 71A EPIP, Phase-1, Jharmajri, Tehsil Baddi, District Solan, H.P. . . *Respondent..*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : None
For Respondent : Shri Rajiv Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 10.12.2020, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shri Karan Kumar s/o Shri Ram Pravesh r/o Village Khajawati, P.O. Koshia, Tehsil Bodhgaya, District Gaya Biharby the Factory Manager/Managing Director M/s Manjushree Technopack Ltd., Plot No. 70 & 71B & 71A EPIP, Phase-1, Jharmajri, Tehsil Baddi, District Solan, H.P.** w.e.f. **7.8.2020 without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? If not, what relief including reinstatement, seniority, back-wages and compensation the aggrieved workman is entitled to from the above employer/management**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which Shri Amrish Kamal, Ld. Counsel has appeared on behalf of the petitioner whereas on behalf of respondent Shri Rajiv Sharma, Ld. Counsel has appeared before this Court.

3. Shri Rajiv Sharma, Ld. Counsel for the respondent has categorically stated *vide* his separate statement that the industrial dispute which has been raised by the petitioner by way of raising demand notice qua the termination of the services of petitioner by the respondent w.e.f. 07.08.2020, without complying with the provisions of the Industrial Disputes Act, is illegal and unjustified to which the appropriate government has sent a reference to this Court/Tribunal. The said reference has been registered as reference no. 11 of 2021. The industrial dispute raised from the side of the petitioner stood amicably settled and resolved between the parties. It is particular to mention that the petitioner has been paid full & final settlement amount of ₹41,360/- (Rupees Forty One Thousand Three Hundred Sixty only) in lieu of his termination, back-wages, past service benefits, compensation etc. The said amount has been duly withdrawn by the petitioner. The respondent has also placed on record various documents *i.e.* full & final accounts settlement (PA), statement of account (PB), annual revision in compensation (PC) and compensation package form (PD).

4. Thus, keeping in view the attendant facts and circumstances of the case vis- a –vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has paid a sum of ₹ 41,360/- (Rupees Forty One Thousand Three Hundred Sixty only) as full and final settlement amount of the claim. From the aforesaid statement of the Ld. Counsel for the respondent, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 11 of 2021.

5. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated by paying** ₹ 41,360/- (Rupees Forty One Thousand Three Hundred Sixty only).

6. The reference is answered accordingly and the award is passed as per the statement of Ld. Counsel for respondent and documents (PA), (PB), (PC) and (PD), which shall form the integral part and parcel of this award.

7. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE RAJESH TOMARPRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

ReferenceNumber : 146 of 2018
Instituted on : 06.08.2018
Decided on : 01.07.2022

KantaW/o Shri Ashok Kumar r/o 124, Sunder Building, Krishna Nagar, Urban Shimla, H.P.
. .*Petitioner.*

VERSUS

The Principal Convent of Jesus and Merry, Navbahar, Shimla-2 H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : None
For Respondent : Shri Deepak Gupta, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 12.6.2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Kanta, w/o Shri Ashok Kumar, r/o 124, Sunder Building, Krishna Nagar, Urban Shimla, H.P. by the Principal Convent of Jesus and Merry, Navbahar, Shimla-2 H.P**. w.e.f**. 31.12.2017 after completion of more than 240 days each years without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? If not, what relief including reinstatement, seniority, back-wages and compensation the aggrieved workman is entitled to from the above employer/management**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed her statement of claim.

3. Shri Deepak Gupta, Ld. Counsel for the respondent has categorically stated *vide* his separate statement that the industrial dispute which has been raised by the petitioner by way of raising demand notice since to his Court by the appropriate government regarding the termination of the services of petitioner by the respondent school w.e.f. 31.12.2017 after completion of more than 240 days in each year, without complying with the provisions of the Industrial Disputes Act to be termed as illegal and unjustified. It is further stated that the reference received from the appropriate government has been registered with this officer as reference no. 146 of 2018. The said industrial dispute has been amicably settled and resolved between the parties. It is particular to mention that the petitioner is passed away and she has been duly represented by her legal heirs. The LR's of the petitioner *vide* affidavits (PA) and (PB) have categorically stated that being the LR's of late petitioner, they have no objection in case the industrial dispute raised by the petitioner (since deceased) is deemed to have been withdrawn on their behalf. They shall not claim any right qua the same from the respondent school.

4. Thus, keeping in view the attendant facts and circumstances of the case *vis-a-vis* perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the late petitioner stood amicably resolved by the LR's of the petitioner. It is also clear from the affidavits (PA) and (PB) that the LR's of the petitioner (since deceased) have no objection in case the case filed by late Smt. Kanta is deemed to have been withdrawn on their behalf and they shall not claim any right qua the same from the respondent school.

5. Since, the LR's of the petitioner (since deceased) have no objection in case the case filed by late Smt. Kanta is deemed to have been withdrawn on their behalf and they shall not claim any right qua the same from the respondent school. The LR's of the late petitioner do not want to proceed further with the present industrial dispute, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the late petitioner stood dismissed as having been withdrawn.**

6. The reference is answered accordingly and the award is passed as per the statement of Ld. Counsel for the respondent, (PA) and (PB), which shall form the integral part and parcel of this award.

7. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SH. RAJESH TOMAR PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

ReferenceNumber : 16 of 2019
Instituted on : 02.01.2019
Decided on : 01.07.2022

Janjotra Gandhi s/o Shri Chand Ra, r/o Village Molgi, PO Labana, Tehsil Rampur, District Shimla H.P. c/o STKHEP Workers Union, Powari, District Kinnaur, H.P. . .*Petitioner.*

VERSUS

The General Manager M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur, H.P. **. .***Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri NiranjanVerma, Advocate
For Respondent: Shri Naresh Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 27.11.2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shri Janjotra Gandhi s/o Shri Chand Ra, r/o Village Molgi, P.O. Labana, Tehsil Rampur, District Shimla H.P. c/o STKHEP Workers Union, Powari, District Kinnaur, H.P. by (i) Shri Parmod Negi, Village & P.O. Barang, Tehsil Kalpa, District Kinnaur, H.P. (Sub contractor) (ii) the General Manager, M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project, Tehsil Kalpa, District Kinnaur, H.P. (contractor) (iii) The General Manager-**cum**-HOP, HPPCL, Shongtong Karchham Hydro Electric Power Project, 450 MW, KC Complex, Reckong Peo, District Kinnaur (Principal Employer)** w.e.f. **21.9.2016 allegedly without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? if not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Sanjay Kumar, Senior Executive HR & Admin., while appearing into the witness box has categorically stated that he is working with the respondent company as Senior Executive HR & Admin., since 2015. The industrial dispute raised from the side of the petitioner by way of receiving the reference sent to this Court by the appropriate government has been amicably settled and resolved between the parties. As per the settlement arrived at between the parties, the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty Five Thousand only) as lump sum compensation to the petitioner. The matter is fully and finally settled and noting survive in the present petition. He also deposed that the compensation amount shall be paid to the petitioner within a period of two months. To this effect, this statement recorded separately and placed on record.

4. Vide separate statement, the said arrangement made between the parties has also been endorsed by Shri Niranjan Verma, Ld. Counsel for the petitioner stating thereby that he has heard and understood the statement given by Shri Sanjay Kumar, Senior Executive HR & Admin., with the respondent company. The said arrangement is duly acceptable to him. He also stated that the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner as full & final settlement. Nothing is due. The reference may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 158 of 2017.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated**. The respondent company is directed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner within a period of two months from today *i.e* 1.7.2022 failing which the same shall carry interest @ 9% per annum.

7. The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE Sh. RAJESH TOMAR PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	26 of 2019
Instituted on	:	03.01.2019
Decided on	:	01.07.2022

BayasDev s/o Shri DarwariLal, r/o Village Nandla, P.O. Salooni, Tehsil Salooni, District Chamba, H.P. . . *Petitioner.*

VERSUS

The General Manager M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur, HP. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri Niranjan Verma, Advocate
For Respondent : Shri Naresh Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 30.11.2018, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shri Bayas Dev s/o Shri DarwariLal, r/o Village Nandla, P.O. Salooni, Tehsil Salooni, District Chamba, H.P. by (i) Shri Parmod Negi, Village & P.O. Barang, Tehsil Kalpa, District Kinnaur, H.P. (Sub contractor), (ii) the General Manager, M/s Patel Engineering Ltd. Shongtong Karcham, Hydro Electric Project, Tehsil Kalpa, District Kinnaur, H.P. (contractor), (iii) The General Manager-**cum**-HOP, HPPCL, Shongtong Karchham Hydro Electric Power Project, 450 MW, KC Complex, Reckong Peo, District Kinnaur (Principal Employer)** w.e.f. **21.9.2016 allegedly without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Sanjay Kumar, Senior Executive HR & Admin., while appearing into the witness box has categorically stated that he is working with the respondent company as Senior Executive HR & Admin., since 2015. The industrial dispute raised from the side of the petitioner by way of receiving the reference sent to this Court by the appropriate government has been amicably settled and resolved between the parties. As per the settlement arrived at between the parties, the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty Five Thousand only) as lump sum compensation to the petitioner. The matter is fully and finally settled and noting survive in the present petition. He also deposed that the compensation amount shall be paid to the petitioner within a period of two months. To this effect, this statement recorded separately and placed on record.

4. Vide separate statement, the said arrangement made between the parties has also been endorsed by Shri Niranjan Verma, Ld. Counsel for the petitioner stating thereby that he has heard and understood the statement given by Shri Sanjay Kumar, Senior Executive HR & Admin., with the respondent company. The said arrangement is duly acceptable to him. He also stated that the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner as full & final settlement. Nothing is due. The reference may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) as full and final settlement amount of the claim.From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 158 of 2017.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated**. The respondent company is directed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner within a period of two months from today *i.e*. 1.7.2022 failing which the same shall carry interest @ 9% per annum.

7. The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SH. RAJESH TOMARPRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

Reference Number	:	45 of 2019
Instituted on	:	01.03.2019
Decided on	:	01.07.2022

Rabinder Singh s/o Shri Nain Singh c/o President STKHEP Workers Union, Powari, District Kinnaur, H.P. . .*Petitioner.*

VERSUS

The General Manager M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur, H.P. . . *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner	:	Shri Niranjan Verma, Advocate
For Respondent	:	Shri Naresh Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government vide notification dated 30.1.2019, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shri Rabinder Singh s/o Shri Nain Singh c/o President STKHEP Workers Union, Powari, District Kinnaur, H.P. by (i) Shri Parmod Negi, Village & P.O. Barang, Tehsil Kalpa, District Kinnaur, H.P. (Sub contractor) (ii) the General Manager, M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project, Tehsil Kalpa, District Kinnaur, HP (contractor) (iii) The General Manager-cum-HOP, HPPCL, Shongtong Karchham Hydro Electric Power Project, 450 MW, KC Complex, Reckong Peo, District Kinnaur (Principal Employer)** w.e.f. **16.7.2016 allegedly without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? if not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"**

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Sanjay Kumar, Senior Executive HR & Admin., while appearing into the witness box has categorically stated that he is working with the respondent company as Senior Executive HR & Admin., since 2015. The industrial dispute raised from the side of the petitioner by way of receiving the reference sent to this Court by the appropriate government has been amicably settled and resolved between the parties. As per the settlement arrived at between the parties, the respondent company is ready and willing to pay a sum of ₹45,000/- (Rupees Forty Five Thousand only) as lump sum compensation to the petitioner. The matter is fully and finally settled and noting survive in the present petition. He also deposed that the compensation amount shall be paid to the petitioner within a period of two months. To this effect, this statement recorded separately and placed on record.

4. Vide separate statement, the said arrangement made between the parties has also been endorsed by Shri Niranjan Verma, Ld. Counsel for the petitioner stating thereby that he has heard and understood the statement given by Shri Sanjay Kumar, Senior Executive HR & Admin., with the respondent company. The said arrangement is duly acceptable to him. He also stated that the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner as full & final settlement. Nothing is due. The reference may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 158 of 2017.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated**. The respondent company is directed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner within a period of two months from today *i.e* 1.7.2022 failing which the same shall carry interest @ 9% per annum.

7. The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SH. RAJESH TOMAR PRESIDING JUDGE
HP INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

ReferenceNumber : 158 of 2017
Instituted on : 30.10.2017
Decided on : 01.07.2022

Shakti Kumar s/o Shri Bhagwan Singh r/o Village Powari, P.O. Shongtong, Tehsil Kalpa, District Kinnaur, H.P. . .*Petitioner.*

VERSUS

The General Manager M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur, H.P. *Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri Niranjan Verma, Advocate
For Respondent : Shri Naresh Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vid*e notification dated 18.3.2016, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shakti Kumar, s/o Shri Bhagwan Singh, s/o Village Powari, P.O. Shongtong, Tehsil Kalpa, District Kinnaur, H.P. by the General Manager, M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur,** w.e.f. **18.3.2016 allegedly without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Sanjay Kumar, Senior Executive HR & Admin., while appearing into the witness box has categorically stated that he is working with the respondent company as Senior Executive HR & Admin., since 2015. The industrial dispute raised from the side of the petitioner by way of receiving the reference sent to this Court by the appropriate government has been amicably settled

and resolved between the parties. As per the settlement arrived at between the parties, the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty Five Thousand only) as lump sum compensation to the petitioner. The matter is fully and finally settled and noting survive in the present petition. He also deposed that the compensation amount shall be paid to the petitioner within a period of two months. To this effect, this statement recorded separately and placed on record.

4. Vide separate statement, the said arrangement made between the parties has also been endorsed by Shri NiranjanVerma, Ld. Counsel for the petitioner stating thereby that he has heard and understood the statement given by Shri Sanjay Kumar, Senior Executive HR & Admin., with the respondent company. The said arrangement is duly acceptable to him. He also stated that the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner as full & final settlement. Nothing is due. The reference may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) as full and final settlement amount of the claim.From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 158 of 2017.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated**. The respondent company is directed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner within a period of two months from today *i.e.* 1.7.2022 failing which the same shall carry interest @ 9% per annum.

7. The reference is answered accordingly and the award is passed as per the statements of both the parties which shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SH. RAJESH TOMAR PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM**-LABOUR COURT, SHIMLA**

ReferenceNumber	:	14 of 2018
Instituted on	:	02.01.2018
Decided on	:	01.07.2022

Kewal Ram s/o Shri Chenkhu Ram, r/o Village Kundakod, P.O. Jadoly, Tehsil Nirmand, District Kullu, H.P. . .*Petitioner.*

VERSUS

The General Manager M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur, H.P.
. .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri NiranjanVerma, Advocate
For Respondent : Shri Naresh Sharma, Advocate

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 30.10.2017, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shri Kewal Ram s/o Shri Chenkhu Ram r/o Village Kundakod, P.O. Jadoly, Tehsil Nirmand, District Kullu, H.P. by the General Manager, M/s Patel Engineering Ltd. Shongtong Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur,** w.e.f. **21.3.2016 allegedly without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? if not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management**?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Sanjay Kumar, Senior Executive HR & Admin., while appearing into the witness box has categorically stated that he is working with the respondent company as Senior Executive HR & Admin., since 2015. The industrial dispute raised from the side of the petitioner by way of receiving the reference sent to this Court by the appropriate government has been amicably settled and resolved between the parties. As per the settlement arrived at between the parties, the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty Five Thousand only) as lump sum compensation to the petitioner. The matter is fully and finally settled and noting survive in the present petition. He also deposed that the compensation amount shall be paid to the petitioner within a period of two months. To this effect, this statement recorded separately and placed on record.

4. Vide separate statement, the said arrangement made between the parties has also been endorsed by Shri Niranjan Verma, Ld. Counsel for the petitioner stating thereby that he has heard and understood the statement given by Shri Sanjay Kumar, Senior Executive HR & Admin., with the respondent company. The said arrangement is duly acceptable to him. He also stated that the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner as full & final settlement. Nothing is due. The reference may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by

the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) as full and final settlement amount of the claim. From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 158 of 2017.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated**. The respondent company is directed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner within a period of two months from today *i.e.* 1.7.2022 failing which the same shall carry interest @ 9% per annum.

7. The reference is answered accordingly and the award is passed as per the statements of both the partieswhich shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

Sd/-
(RAJESH TOMAR)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

BEFORE SH. RAJESH TOMAR PRESIDING JUDGE
H.P. INDUSTRIAL TRIBUNAL-CUM-**LABOUR COURT, SHIMLA**

ReferenceNumber : 55 of 2018
Instituted on : 03.03.2018
Decided on : 01.07.2022

Narbu Gialchhan s/o Shri Dandu Ram, r/o Village Karla, PO Spillow, Tehsil Poh, District Kinnaur, H.P. . .*Petitioner.*

VERSUS

The General Manager M/s Patel Engineering Ltd. Shongtong-Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur, H.P. . .*Respondent.*

Reference under section 10 of the Industrial Disputes Act, 1947.

For Petitioner : Shri Niranjan Verma, Advocate
For Respondent : Shri Naresh Sharma, Advocate.

AWARD

The following reference petition has been, received from the Appropriate Government *vide* notification dated 30.12.2017, under section 10 of the Industrial Disputes Act, 1947 (hereinafter referred to be as the Act), for its legal adjudication:

"**Whether termination of the service of Shri Narbu Gialchhan s/o Shri Dandu Ram r/o Village Karla, P.O. Spillow, Tehsil Poh, District Kinnaur, H.P.** w.e.f. **30.3.2016 by the**

General Manager, M/s Patel Engineering Ltd. Shongtong Karcham, Hydro Electric Project (450 MW) Near State Bank of Patiala, VPO Khawangi, Tehsil Kalpa, District Kinnaur, allegedly without complying with the provision of the Industrial Dispute Act 1947, is legal and justified? If not, what amount of back-wages, seniority, past service benefits and compensation, the above ex-worker is entitled to from the above employer/management?"

2. On receipt of the said reference from the Appropriate Government, notices were issued to the concerned parties in pursuance to which the petitioner has filed his statement of claim.

3. Shri Sanjay Kumar, Senior Executive HR & Admin., while appearing into the witness box has categorically stated that he is working with the respondent company as Senior Executive HR & Admin., since 2015. The industrial dispute raised from the side of the petitioner by way of receiving the reference sent to this Court by the appropriate government has been amicably settled and resolved between the parties. As per the settlement arrived at between the parties, the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty Five Thousand only) as lump sum compensation to the petitioner. The matter is fully and finally settled and noting survive in the present petition. He also deposed that the compensation amount shall be paid to the petitioner within a period of two months. To this effect, this statement recorded separately and placed on record.

4. Vide separate statement, the said arrangement made between the parties has also been endorsed by Shri Niranjan Verma, Ld. Counsel for the petitioner stating thereby that he has heard and understood the statement given by Shri Sanjay Kumar, Senior Executive HR & Admin., with the respondent company. The said arrangement is duly acceptable to him. He also stated that the respondent company is ready and willing to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner as full & final settlement. Nothing is due. The reference may kindly be decided accordingly.

5. Thus, keeping in view the attendant facts and circumstances of the case vis-a-vis perusal of the case record manifestly and conclusively goes to demonstrates that the Industrial Dispute raised from the side of the petitioner stood amicably resolved and finally compromised by the petitioner and the respondent has agreed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) as full and final settlement amount of the claim.From the aforesaid statements of the parties, it is apparently established that the parties have compromised the industrial dispute arising out of reference no. 158 of 2017.

6. Since, the matter stood amicably resolved and settled between the parties by way of amicable settlement, therefore, nothing survives in the present industrial dispute. **Consequently, the industrial dispute raised by the petitioner stood amicably settled to which the petitioner has been fully & finally compensated**. The respondent company is directed to pay a sum of ₹ 45,000/- (Rupees Forty five Thousand only) to the petitioner within a period of two months from today *i.e.* 1.7.2022 failing which the same shall carry interest @ 9% per annum.

7. The reference is answered accordingly and the award is passed as per the statements of both the partieswhich shall form the integral part and parcel of this award.

8. Let a copy of this award be communicated to the appropriate government for publication in the official gazette. File, after completion, be consigned to records.

Announced:
1.7.2022.

(Rajesh Tomar)
Presiding Judge,
Industrial Tribunal-cum-
Labour Court, Shimla.

CHANGE OF NAME

I, Saroj Sharma w/o Sh. Dinesh Bhardwaj, r/o Village Chiuni, P.O. Lower Koti, Tehsil Rohru, District Shimla (H.P.) declare that I have changed my name from Saroj Kumari to Saroj Sharma . All concerned please note.

SAROJ SHARMA,
w/o Sh. Dinesh Bhardwaj,
r/o Vill. Chiuni, P.O. Lower Koti,
Tehsil Rohru, District Shimla (H.P.).

CHANGE OF NAME

I, Dinesh Bhardwaj s/o Sh. Murki Lal Sharma, r/o Village Chiuni, P.O. Lower Koti, Tehsil Rohru, District Shimla (H.P.) declare that I have changed my name from Dinesh Kumar to Dinesh Bhardwaj. All concerned please note.

DINESH BHARDWAJ,
s/o Sh. Murki Lal Sharma,
r/o Vill. Chiuni, P.O. Lower Koti,
Tehsil Rohru, District Shimla (H.P.).

CHANGE OF NAME

I, Jagat Ram Kaushal (54 years) s/o Ram Lal, Village Bhalwani, P.O. Bahanwin, Tehsil Bhoranj, District Hamirpur (H.P.) declared that I have changed my name from Jagat Ram to Jagat Ram Kaushal for the future. All Concerned note.

JAGAT RAM KAUSHAL,
s/o Ram Lal,
Village Bhalwani, P.O. Bahanwin,
Tehsil Bhoranj, District Hamirpur (H.P.).

नियन्त्रक, मुद्रण तथा लेखन सामग्री, हिमाचल प्रदेश, शिमला–5 द्वारा मुद्रित तथा प्रकाशित
इलेक्ट्रॉनिक हस्ताक्षरित राजपत्र, वैबसाइट http://rajpatrahimachal.nic.in पर उपलब्ध है एवम् ऑनलाइन सत्यापित किया जा सकता है।